

Reference: 20200388

2 February 2021

Thank you for your Official Information Act request, received on 9 November 2020.
You requested the following:

Treasury Report T2020/170: Earthquake Insurance Update: February 2020

Aide Memoire T2020/257: Insurance and other related issues facing multi-unit residential buildings

Treasury Report T2020/132: Coverage of mixed-use buildings under the Earthquake Commission Act

Inland Revenue Report IR2020/134: COVID-19: Inland Revenue's tax relief package in response to the 2016 Gastroenteritis outbreak in Havelock North – a comparison

Treasury Report T2020/526: Earthquake Insurance Update: March 2020

Joint Report by the Treasury and Ministry of Transport T2020/827: COVID-19 - impacts for Waka Kotahi NZ Transport Agency's major contractors and supply chain

Aide Memoire T2020/949: Insurer responses to COVID-19

Treasury Report T2020/891: Options for EQC reinsurance programme

Aide Memoire T2020/1406: Cabinet paper: Investing in water infrastructure to accelerate reform and support economic recovery post COVID-19

Joint Report by the Treasury and Department of Internal Affairs T2020/1504: Preserving the Nation's Memory: Archives Wellington finance lease

Treasury Report T2020/1133: Correspondence from the Chairs of the Horizons and Greater Wellington Regional Councils

Treasury Report T2020/1444: Impact of Covid-19 on Tertiary Education Organisations

Aide Memoire T2020/1718: Resubmitted DEV item: Investing in water infrastructure to accelerate reform and support economic recovery post COVID-19

On 7 December 2020, I wrote to you to extend the time limit for deciding on your request by an additional 25 working days, due to the consultations required.

Information being released

Please find enclosed the following documents:

Item	Date	Document Description	Decision
1.	13 February 2020	Treasury Report T2020/170: Earthquake insurance update: February 2020	Release in part
2.	13 February 2020	Aide Memoire T2020/257: Insurance and other related issues facing multi-unit residential buildings	Release in part
3.	14 February 2020	Treasury Report T2020/132: Coverage of mixed-use buildings under the Earthquake Commission Act	Release in part
4.	11 March 2020	Treasury Report T2020/526: Earthquake Insurance Update: March 2020	Release in part
5.	31 March 2020	Joint Report by the Treasury and Ministry of Transport T2020/827: COVID-19 impacts for Waka Kotahi NZ Transport Agency's major contractors and supply chain	Release in part
6.	9 April 2020	Aide Memoire T2020/949: Insurer responses to COVID-19	Release in part
7.	9 April 2020	Treasury Report T2020/891: Options for EQC reinsurance programme	Release in part
8.	8 May 2020	Aide Memoire T2020/1406: Cabinet paper: Investing in water infrastructure to accelerate reform and support economic recovery post COVID-19	Release in part
9.	15 May 2020	Joint Report by the Treasury and Department of Internal Affairs T2020/1504: Preserving the Nation's Memory: Archives Wellington finance lease	Release in part

10.	28 May 2020	Treasury Report T2020/1133: Correspondence from the Chairs of the Horizons and Greater Wellington Regional Councils	Release in part
11.	29 May 2020	Aide Memoire T2020/1718: Resubmitted DEV item: Investing in water infrastructure to accelerate reform and support economic recovery post COVID-19	Release in part

I have decided to release the relevant parts of the documents listed above, subject to information being withheld under one or more of the following sections of the Official Information Act, as applicable:

- section 9(2)(ba)(i) – to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied,
- advice still under consideration, section 9(2)(f)(iv) – to maintain the current constitutional conventions protecting the confidentiality of advice tendered by Ministers and officials,
- certain sensitive advice, under section 9(2)(g)(i) – to maintain the effective conduct of public affairs through the free and frank expression of opinions,
- names and contact details of officials, under section 9(2)(g)(ii) – to maintain the effective conduct of public affairs through protecting ministers, members of government organisations, officers and employees from improper pressure or harassment,
- under section 9(2)(h) – to maintain legal professional privilege,
- section 9(2)(i) – to enable the Crown to carry out commercial activities without prejudice or disadvantage,
- confidential information, under section 9(2)(j) – to enable the Crown to negotiate without prejudice or disadvantage,
- direct dial phone numbers of officials, under section 9(2)(k) – to prevent the disclosure of information for improper gain or improper advantage.

Direct dial phone numbers of officials have been redacted under section 9(2)(k) in order to reduce the possibility of staff being exposed to phishing and other scams. This is because information released under the OIA may end up in the public domain, for example, on websites including Treasury's website.

Information publicly available

The following information is also covered by your request and is publicly available on the Treasury and Covid-19 websites:

Item	Date	Document Description	Website Address
12.	6 March 2020	Inland Revenue Report IR2020/134: COVID-19: Inland Revenue's tax relief package in response to the 2016 Gastroenteritis outbreak in Havelock North – a comparison	https://covid19.govt.nz/assets/resources/proactive-release/COVID-19-Inland-Revenues-tax-relief-package-in-response-to-the-2016-Gastroenteritis-outbreak-in-Havelock-North-a-comparison.pdf
13.	28 May 2020	Treasury Report T2020/1444: Impact of Covid-19 on Tertiary Education Organisations	https://www.treasury.govt.nz/sites/default/files/2020-11/oia-20200332.pdf

Accordingly, I have refused your request for the documents listed in the above table under section 18(d) of the Official Information Act:

- the information requested is or will soon be publicly available.

Some relevant information has been removed from documents listed in the above table and should continue to be withheld under the Official Information Act, on the grounds described in the documents.

In making my decision, I have considered the public interest considerations in section 9(1) of the Official Information Act.

Please note that this letter (with your personal details removed) and enclosed documents may be published on the Treasury website.

This reply addresses the information you requested. You have the right to ask the Ombudsman to investigate and review my decision.

Yours sincerely

Jean McDowall
Acting Team Leader Ministerial Advisory

OIA 20200388

Information for Release

1.	<u>Treasury Report Earthquake insurance update February 2020</u>	1
2.	<u>Aide Memoire Insurance and other related issues facing multi-unit residential buildings</u>	6
3.	<u>Treasury Report Coverage of mixed-use buildings under the Earthquake Commission Act</u>	14
4.	<u>Treasury Report Earthquake insurance Update March 2020</u>	29
5.	<u>Joint Report COVID-19 impacts for Waka Kotahi NZ Transport Agency's major contractors and supply chain</u>	34
6.	<u>Aide Memoire Insurer responses to COVID-19</u>	39
7.	<u>Treasury Report Options for EQC reinsurance programme</u>	42
8.	<u>Aide Memoire Cabinet paper Investing in water infrastructure to accelerate reform and support economic recovery post COVID-19</u>	51
9.	<u>Joint Report Preserving the Nation's Memory Archives Wellington finance lease</u>	57
10.	<u>Treasury Report Correspondence from the Chairs of the Horizons and Greater Wellington Regional Councils</u>	67
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Treasury Report: Earthquake Insurance Update: February 2020

Date:	13 February 2020	Report No:	T2020/170
		File Number:	TY-2-1-17-3

Action sought

	Action sought	Deadline
Hon Grant Robertson Minister Responsible for the Earthquake Commission	Note the state of play and next steps on earthquake insurance workstreams as set out in the attached status report.	Prior to your meeting with Treasury officials at 3:30pm on 19 February 2020.

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Danijela Tavich	Analyst, Earthquake Commission Policy Team	s9(2)(k)	n/a (mob) ✓
Helen McDonald	Manager, Earthquake Commission Policy Team	s9(2)(g)(ii)	

Minister's Office actions (if required)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: Yes (attached)

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Treasury Report: Earthquake Insurance Update: February 2020

Executive Summary

You are scheduled to meet with officials to discuss earthquake insurance matters at 3.30pm on 19 February 2020.

The proposed agenda items for discussion are:

- the process for the report of the Public Inquiry into the Earthquake Commission;
- the process and timelines for work on options to address the affordability and availability of residential property insurance; and
- insurance and other related issues facing multi-unit and mixed-use residential buildings.

Attached is a status report providing an update on the current state of play and the next steps on various earthquake insurance workstreams.

Recommended Action

We recommend that you:

- a **note** the state of play and next steps on earthquake insurance workstreams as set out in the attached status report.

Helen McDonald
Manager, Earthquake Commission Policy Team

Hon Grant Robertson
Minister Responsible for the Earthquake Commission

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Update on Earthquake Insurance Workstreams: February 2020

Priority area and state of play	Upcoming milestones and advice		
	February	March	April onwards
Property insurance <ul style="list-style-type: none"> Cabinet has agreed to further work on prioritised options to improve property insurance affordability and availability. We intend to consult key stakeholders on the options in late February 2020. The Treasury met with the Chair of the EQC Board on 13 February to discuss this work. Our existing timetable is to provide advice to you on the prioritised options in May 2020. However, we are re-assessing the timetable following your request to expedite the work. We intend to discuss the timetable with you at the EQC portfolio meeting on 19 February. The Treasury is developing advice on facilitating better public understanding of the relationship between property insurance and natural hazard risks. We will soon consult with key stakeholders to gain a better understanding of the issues to inform potential options. 	<ul style="list-style-type: none"> February / early March – Report to you on feedback from further consultation with insurers and other stakeholders on changes to the EQC cap or the s9(2)(f)(iv) 	<ul style="list-style-type: none"> 26 March – The Treasury will provide advice on facilitating better public understanding of property insurance and natural hazard risks. 	
Earthquake Commission <ul style="list-style-type: none"> Southern Response Transition – We continue to monitor the progress made by EQC and Southern Response with regard to EQC acting as an agent for Southern Response claims management activities. We attended a Readiness strategy session hosted by EQC in December. Feedback will be included in the Monitoring Update Report in February 2020. We continue to assess the Crown Guarantee funding requirement. 	<ul style="list-style-type: none"> Monitoring Update Report. Initial sample findings and update on Christchurch drainage investigation. 	<ul style="list-style-type: none"> EQC second quarter performance report ending 31 December 2019 received. March / April – Review of December 2019 Insurance Liability Valuation Report. March / April – policy update covering implementation of the on-sold policy. 	<ul style="list-style-type: none"> April / May – Advice on the 2020/21 Statement of Performance Expectations and Statement of Intent. Early May – Potential for deficiency Funding Deed payment.
Future of the Earthquake Commission policy work <ul style="list-style-type: none"> A further EQC amendment bill is expected following the final report from the Public Inquiry into the Earthquake Commission. 	<ul style="list-style-type: none"> Report seeking high-level design decisions on a future EQC scheme. The aim is that you have this report before making decisions on the monetary caps on EQC cover. Information report on EQC and hazards affected by climate change. 		

<p>Coverage of mixed-use buildings under the Earthquake Commission Act</p> <ul style="list-style-type: none"> The Treasury is progressing your request for a change to the EQC scheme's coverage of mixed-use buildings. We completed targeted consultation with stakeholders to test policy options, and provided you with a report that included policy proposals for your consideration on 17 January. You requested further advice, which we provided on 28 January and 5 February. Based on your feedback on our latest report, we will provide a Cabinet paper for your consideration on 14 February. 	<p>IN-CONFIDENCE</p> <ul style="list-style-type: none"> 14 February – Draft Cabinet paper to obtain policy approvals for the Bill, and Regulatory Impact Statement 	<ul style="list-style-type: none"> 11 March – Final policy approvals from DEV 16 March – Final policy approvals from Cabinet March – Final drafting instructions sent to PCO. 	<ul style="list-style-type: none"> April – Bill provided to the Ministry of Justice for an assessment of consistency with the New Zealand Bill of Rights Act. May – Bill before LEG Committee and Cabinet for approval for introduction. May – Bill introduced. Early 2021 – Select Committee report-back. Early 2021 – Final policy approvals obtained from Cabinet for any substantive SOP to Bill. Early 2021 – Bill enacted. Early 2021 – Bill commences (subject to consultation with EQC and insurers).
<p>Public Inquiry into the Earthquake Commission</p> <ul style="list-style-type: none"> We have provided you with a report on the process for releasing the Inquiry's final report. The report also outlines the choices you have around presenting the report to the House, and the Government's response to its findings. 		<ul style="list-style-type: none"> 27 March – the Inquiry intends to release its final report. 	
<p>Southern Response</p> <p>Southern Response workstreams:</p> <ul style="list-style-type: none"> Significant litigation: A Treasury Report [legally privileged] was sent to Ministers on 27 January 2020. Officials will prepare and report on next steps once they have received Ministerial feedback. <ol style="list-style-type: none"> <i>Dodds</i> – The Crown took control of the proceedings in 2019 and through appeal of the High Court decision, is testing key issues to provide the basis for wider decision-making. Court hearing: 5-6 May 2020 <i>Ross</i> – Representative action s9(2)(g)(i) which are still in preliminary stages. Hearing an appeal of opt-in/opt-out issue being heard in Supreme Court – 23-24 March 2020 Southern Response transition: the transition was largely completed in December 2019 and the company appears to be operating effectively under its new structure. We continue to monitor progress. Accountability documents: Southern Response produced draft amended SOI and SPE documents in December 2019. A Treasury report was sent to Ministers on 31 January along with a draft Ministers' letter to the Board. New SOI, SPE and business plan will be prepared following receipt of Letter of Expectations from Ministers (targeted for February 2020). 	<ul style="list-style-type: none"> Ministers may choose to meet with officials to discuss Treasury Report [legally privileged]. Letter of Expectations from shareholding Ministers to feed into 2020 business planning round. Report on performance for quarter ending 31 December 2019. 	<ul style="list-style-type: none"> 23-24 March – Supreme Court hearing of appeal against Court of Appeal opt-out decision in <i>Ross</i>. 	<ul style="list-style-type: none"> 5-6 May – Court of Appeal hearing re <i>Dodds</i> By 31 May – Draft Statement of Intent (SOI) and SPE for 1 July 2020 onwards. Potential for funding payment in April (last forecast received indicated ~\$10m may be needed).
<p>Claims resolution system</p> <p>The system constitutes a number of areas including:</p> <ul style="list-style-type: none"> The quarterly report of insurance claims Canterbury Earthquake Insurance Tribunal (CEIT) Greater Christchurch Claims Resolution Service (GCCRS) Cases with presidential value and declaratory judgements On-sold properties. 	<ul style="list-style-type: none"> Progress report on December quarter Canterbury insurance claims settlement. Additional performance metrics for GCCRS included into their monitoring framework. The Tribunal: significant increase in number of Members (adjudicators) on the Tribunal, increasing ability to hear cases (net increase 	<ul style="list-style-type: none"> 	

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	from three Members to 6). To date, there have been two judgements by the Chair.		
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Reference: T2020/257

Date: 13 February 2020

To: Minister of Finance (Hon Grant Robertson)

Deadline: 19 February 2020
(if any)

Aide Memoire: Insurance and other related issues facing multi-unit residential buildings

You have requested information on insurance and other related issues facing multi-unit buildings, and the actions underway, or planned, across government to address them.

This aide memoire sets out this information and seeks feedback from you on your priorities and objectives regarding multi-unit building policies. It also seeks your views on the role of the Treasury in coordinating or driving this work. **Appendix 1** below sets out a list of these issues and current policy work underway.

We would like to discuss this briefing with you at your EQC meeting with officials on 19 February 2020.

Ministry of Business Innovation and Employment (Financial Markets and Building System Performance), Ministry of Housing and Urban Development, and Ministry of Culture and Heritage have been consulted on this aide memoire.

Features of multi-unit buildings

Multi-unit buildings (MUBs) can include a wide range of properties, ranging from apartment buildings, to terraced housing on a cross-lease title, and to retirement villages.

This report is focussed on buildings managed by a body corporate in accordance with the Unit Titles Act 2010 (e.g. a unit-title apartment, townhouse or flat, and mixed-use buildings such as buildings with apartments and non-residential premises) and other similar buildings (e.g. company share apartment buildings).

Compared to detached residential houses (and some buildings with party walls), there are additional challenges for the owners of and the management of MUBs due to:

- governance and decision making problems arising from multiple ownership (e.g. decisions about how to allocate repair costs), and
- MUBs tending to be higher-value buildings with more complex engineering and associated repair costs and risks.

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Key issues and policy work underway

There appear to be three main underlying issues facing MUBs.

The three issues are:

- Governance and decision-making issues
- The resilience of the existing building stock
- Insurance market changes and uncertainty

These issues may impede the government's objectives to improve housing affordability through higher density living and urban intensification, as set out in its Government Economic Plan and Urban Growth Agenda. These issues are described further below.

Governance and decision making issues

Earthquake events over the past decade and the 'leaky buildings' problem have highlighted the sometimes very challenging governance, decision-making, and ownership issues facing MUBs when these buildings are damaged or destroyed.¹ Key governance issues include:

- a lack of understanding by owners about what they own
- lack of or weak governance structures
- difficulties with insurance settlements, and
- distribution of the insurance proceeds, and protecting the interests of vulnerable owners and residents.

The Unit Titles Act 2010 (UTA) sets out governance arrangements for unit title buildings, including how residents should collectively make decisions about a MUB. It appears the market is responding to concerns about the current statutory framework for managing multi-unit buildings, the UTA, by actively marketing new multi-unit building developments as having "no body corporate".²

Given the UTA was introduced in response to problems with other forms of social living (eg cross-lease), it is concerning that those other forms are being favoured, which may suggest some of the policy goals of the UTA – such as providing an effective framework for communal or higher-density living – are not being met.

Future issues may arise from buildings with shared structural elements that do *not* have a body corporate. Without formal governance arrangements, owners may face future challenges when managing building maintenance and repairs, including after natural disasters. This includes greater difficulty in determining liability of damage, settling and resolving insurance claims, and ensuring there is enough maintenance funding available.

¹ Refer to BRANZ report Revised Legal Frameworks for the Ownership and Use of Multi-dwelling Units (2016)

² An example is the Paddington complex on Taranaki Street.

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A number of stakeholders have raised concerns with us about multi-unit buildings having no body corporate. s9(2)(ba)(i)

A review of the UTA was started in 2016, but was not completed due to reprioritising of resources in the housing portfolio to implement the Urban Development Legislation, Residential Tenancies Act Reform and Healthy Homes Regulations. The Ministry of Housing and Urban Development (the agency responsible for administering the UTA) is currently considering revisiting the UTA review, subject to resourcing and Ministerial priorities.

The Treasury considers that completing a review of the UTA is a high priority. A review of the UTA could seek to improve the governance and operation of multi-unit buildings and thereby promote public interest in higher density living. This would support the government's objectives for housing affordability. You may wish to raise this at your next meeting with the Minister of Housing.

The resilience of the existing building stock

The approaching deadline for earthquake-prone building remediation (required under the Building Act), market preferences for resilient buildings, and rising insurance premiums are revealing the cost of buildings with low seismic resilience. Under the status quo, the cost of low resilience buildings tends to fall on existing building owners. A MartinJenkins report from 2012 estimated that the costs of bringing New Zealand's earthquake-prone buildings stock to 34 percent of the New Building Standard (NBS) would amount to \$4.2 billion.³

Reducing the cost to existing building owners would imply shifting fiscal costs to the Government, or to society via increased life-risk in the future. Earthquake strengthening also takes time.

Insurance market changes and uncertainty

Over recent years, insurance premiums for some MUBs have increased significantly in high-seismic risk regions such as Wellington. These changes, at least in part, appear to be caused by insurers' better understanding of risk and the damage that can be caused by seismic activity – and insurers increasingly allocating the risk posed by higher risk properties to those properties. Premium increases appear to be more acute for MUBs, when compared to detached houses, as it is economic for insurers to apply greater underwriting scrutiny to large complex risks such as MUBs.

Changes in the MUBs insurance market, uncertainty about future premium increases, and the availability of insurance may be exacerbating other issues facing MUB owners. Insurance costs and earthquake strengthening costs may be affecting the same properties, which could be substantial for building owners. This can raise MUB owners' concerns about the conduct of insurance brokers and body corporate managers (including transparency of commissions).

³ MartinJenkins report (September 2012), "Indicative CBA Model for Earthquake prone building review", (Ministry of Business, Innovation and Employment commissioned review). The modelling of strengthening costs in this report is based on fixed costs per square metre that increased as the level of strengthening increased. The estimates were based on midpoints of different engineers' estimates, with wide ranges acknowledged as limitations.

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Insurance issues stem in part from the other two previous issues of governance and building risk. Assuming insurance markets are sufficiently competitive, this would suggest that there is limited scope to address insurance issues without addressing the other two underlying issues, unless the Government is willing to take on some of the risk currently faced by insurers.

The Treasury is developing advice on options for improving the affordability and availability of property insurance (DEV-19-MIN-0332). High insurance premiums are not a public policy issue per se (and some buildings may be uneconomic to insure or strengthen, leading to financial losses for owners), but high premiums may reflect issues with the functioning of the insurance market or create an implicit fiscal risk if insurance coverage falls.

Next steps

Over the past 12 months you have commissioned advice on a range of initiatives to address issues facing MUBs. You have indicated a need for greater coordination across government. No agency is currently coordinating MUBs policy.

We would like to discuss your priorities and objectives regarding multi-unit building policy, and our role in coordinating or driving this work, at your EQC portfolio meeting on 19 February.

Max Lin, Analyst, Financial Markets, s9(2)(k)

Robbie Taylor, Manager Financial Markets, Financial Markets, s9(2)(k)

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Appendix 1. Insurance-related issues facing multi-unit buildings and relevant workstreams

Topic and agency lead	Description of issue	Current policy / work underway	Next step
<i>Affordability and availability of property insurance</i>			
Affordability and availability of insurance for multi-unit buildings (Treasury Financial Markets)	Some multi-unit residential buildings have experienced significant increases in private insurance premiums and more limited availability of insurance (i.e. able to renew the existing insurance policy, but no other options).	Treasury is preparing advice on increasing the EQC cap, targeted EQC caps for high-risk properties and government-provided insurance.	February 2020 – Consultation with insurers and targeted property owners. May 2020 – Advice due.
Application of EQC to mixed use buildings (Treasury EQC Policy)	The design of the current residential building test under the EQC Act, which determines whether a mixed-use multi-unit building is residential (and thus eligible for EQC cover over the whole building), seems to result in unintended inequitable outcomes for owners of mixed-use buildings. The current test does not account for wider residential use of and interest in a mixed-use building, beyond the space of a dwelling (apartment). Issues around the residential building test and eligibility for EQC cover are becoming more salient due to wider changes in property insurance markets and the added financial pressure this is creating for owners of homes in mixed-use buildings.	We will provide a draft Cabinet paper on 14 February, on changes to the treatment of mixed-use buildings under the EQC Act. Following Ministerial consultation, the paper is intended to be considered by DEV on 4 March to go to Cabinet on 9 March.	14 February – Draft Cabinet paper on the content of the 2020 EQC Bill. LEG to be introduced mid-2020.
Unit Titles Act insurance requirement to insure to the full value (MHUD)	All body corporates are currently required to insure to the full value of the building. Anecdotal reports that this may drive up premium cost if there is limited availability.	Draft guidance for body corporates about how this requirement can be met is being prepared and will be provided to your office in February. A review of the Unit Titles Act was started in 2016. No changes were proposed to the requirement to insure to the full value.	None.

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Topic and agency lead	Description of issue	Current policy / work underway	Next step
Building and construction issues			
Earthquake-prone building strengthening requirements (MBIE Building System Performance) (Treasury Tax)	Concern that some earthquake prone multi-unit buildings are unable to meet new strengthening requirements due to high costs.	s9(2)(g)(i)	s9(2)(g)(i)
		Treasury and Inland Revenue examined tax relief options for earthquake strengthening.	There are no actions and no further advice commissioned on tax relief options.
Earthquake prone building financial assistance scheme (MBIE Building System Performance)/Kainga Ora	Concern about financial hardship if owner-occupiers are unable to get a loan for a bank to finance their share of the earthquake strengthening costs.	CBC agreed to a limited financial assistance scheme with strict eligibility on 28 January 2020. This was confirmed by Cabinet on 10 February 2020.	The scheme is expected to be operational by mid-2020. Ministers are planning to announce the scheme soon.
Updates to building standards (MBIE Building System Performance)	MBIE is working on a number of initiatives to ensure that buildings are designed appropriately to withstand future earthquakes. This includes work to better understand the earthquake hazard in New Zealand and to provide a framework for building design that supports resilience.	Update to the National Seismic Hazard Model (NSHM). MBIE has committed to fund GNS to update the NSHM which underpins the understanding of seismic hazard and informs the earthquake provisions in the Building Code. Work with Engineering New Zealand and the Structural Engineering Society to provide information on the seismic design of low-damage buildings.	MBIE are working with GNS and other agencies to ensure that the NSHM has appropriate governance and long-term funding.
Strengthening heritage protections for heritage places (MCH Heritage Policy)	Our heritage buildings face significant vulnerabilities. In provincial centres, low economic drivers and building values, coupled with short timeframes for earthquake-strengthening impact on the retention of highly significant heritage buildings. In urban areas, high development pressures coupled with inadequate heritage protections threaten the survival of significant heritage buildings. The Ministry has previously provided funding to Body Corporates for seismic strengthening through our Heritage EQUIP programme. The Ministry has gathered significant insight from stakeholders during this policy work and may be able to provide useful insight.	Development of National Planning Standards and investigation into potential funding and incentives for heritage building owners.	Recently completed engagement with stakeholders. Currently developing briefing on potential funding and incentives.

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Topic and agency lead	Description of issue	Current policy / work underway	Next step
<i>Coordination and decision-making</i>			
Multi-unit building decision making, particularly on damage/insurance (MHUD)	Issues with buildings being marketed as “no body corporate” despite them being adjoining buildings. Without formal governance arrangements, owners may face future challenges when managing building maintenance and repairs, including after natural disasters. This includes greater difficulty in determining liability of damage, settling and resolving insurance claims, and ensuring there is enough maintenance funding available. A number of stakeholders have raised concerns with Treasury about multi-unit buildings having no body corporate. s9(2)(ba)(i)	Consideration is being given to revisiting the review of the Unit Titles Act, which commenced in 2016 but never completed. If this work progresses, it may consider some of these issues. It is not yet known what priority this review would take.	No immediate next steps.
<i>Understanding of property insurance</i>			
Information about insurance and requirements (Treasury Financial Markets and MBIE Financial Markets)	The public may have limited understanding about property insurance, such as the costs involved, and property risks.	s9(2)(f)(iv) Financial Services Legislation Amendment Act (FSLAA) will require persons giving regulated financial advice to ensure retail clients understand the nature and scope of that advice. The duty will apply to financial advice about property insurance. MBIE's insurance contract law review will require insurance policies to be written and presented clearly and introduce a regulation making power so that insurers can be required to publish certain information in relation to consumer insurance policies.	s9(2)(f)(iv)

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Topic and agency lead	Description of issue	Current policy / work underway	Next step
<i>Conduct of agents</i>			
Conduct of insurance brokers (MBIE Financial Markets)	Anecdotal reports of poor conduct and/or non-transparent commissions by brokers. A proportion of property insurance premium increases could be attributed to brokerage commissions.	FMA/MBIE Financial Services Legislation Amendment Act (FSLAA) regulations will require brokers to disclose conflicts of interest and commissions in the giving of financial advice, including for property insurance. MBIE conduct regime will require most brokers to comply with incentives regulations eg ban on incentives with targets based on volume or value of product/service. The Insurance Brokers Association of New Zealand (IBANZ) and the Insurance Council of New Zealand (ICNZ) have established a working group to agree principles for the treatment of customers, particularly when there are significant premium increases (e.g. giving notice and explaining premium increases).	FSLAA disclosure regulations will be finalised for consideration by Cabinet in early 2020.
Conduct of body corporate managers (No agencies)	Anecdotal reports of poor conduct and/or non-transparent commissions by body corporate managers.	Not specially regulated at this time. Regulated by general contract law. Relies on body corporates ending contract/relationship with the body corporate manager (but some developers sell rights to manage a body corporate for several years, limiting this). Improving the professionalism of body corporate management was one of the proposals canvassed in the 2016 review of the Unit Titles Act, and could be looked at again if this work is revisited.	None.

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Treasury Report: Coverage of mixed-use buildings under the Earthquake Commission Act: Cabinet paper

Date:	14 February 2020	Report No:	T2020/132
		File Number:	TY-2-1-17-2

Action Sought

	Action Sought	Deadline
Hon Grant Robertson Minister of Finance Minister Responsible for the Earthquake Commission	Sign the attached Cabinet paper on proposed amendments to the EQC Act; Agree the amendments should commence from 1 June 2021; Refer this report and the attached Cabinet paper to the Minister of Internal Affairs.	10:00am 27 February 2020

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Danijela Tavich	Analyst, Earthquake Commission Policy Team	s9(2)(k)	n/a (mob) ✓
Helen McDonald	Manager, Earthquake Commission Policy Team		s9(2)(g)(ii)

Actions for the Minister's Office Staff (if required)

Return the signed report to Treasury.
Circulate the Cabinet paper for Ministerial consultation.
Lodge the Cabinet paper with the Cabinet office by 10:00am 27 February 2020 for the Cabinet Economic Development Committee on 4 March 2020.
Refer a copy of this report to the Minister of Internal Affairs.

Note any feedback on the quality of the report

Enclosure: Yes

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Treasury Report: Coverage of mixed-use buildings under the Earthquake Commission Act: Cabinet paper

You have agreed to progress amendments to the Earthquake Commission Act 1993 (the EQC Act) to be introduced in 2020, focusing on the insurance coverage of mixed-use buildings, and the EQC Act's definition of 'residential building' (T2020/100 refers).

The attached Cabinet paper, for your consideration, seeks agreement from Cabinet to begin drafting an Earthquake Commission Amendment Bill to give effect to these amendments. The Bill is intended to focus on EQC cover of mixed-use buildings, and the EQC Act definition of 'residential building', which is a key determinant of the extent of EQC cover provided for a building. The intent of the amendments is to ensure that the EQC Act accounts for homeowners' use of, and interest in, common areas in mixed-use buildings.

We recommend that, should you agree to sign the Cabinet paper, this should be lodged following consultation with your colleagues by 10:00am 27 February 2020, for consideration by the Cabinet Economic Development Committee (DEV) on 4 March 2020.

Due to the implications of a change in the EQC Act residential building definition for the Fire and Emergency New Zealand (FENZ) levy (T2019/4015 refers), we recommend that this report and the attached Cabinet paper should be referred to the Minister of Internal Affairs for noting.

We have also attached a draft version of the Regulatory Impact Statement for the proposals. We will provide a final version for lodgement and update the statement on regulatory quality in the Cabinet paper prior to lodgement on 27 February 2020.

Transitional provisions

EQC suggest that the commencement of the proposed amendments to the EQC Act would trigger a renegotiation process between EQC and its reinsurers. The relevant EQC reinsurance contracts at the time of enactment will expire on 31 May 2021.

Based on this feedback, there are two options for transitional provisions to implement the amended EQC Act:

- Commencement from enactment date, expected to be early 2021 (not recommended due to triggering a renegotiation for EQC and reinsurers);
- Commencement from 1 June 2021 (**recommended**, to allow EQC to renegotiate with reinsurers as part reinsurance of policy renewal)

Delaying commencement risks a significant claims event occurring between enactment and commencement dates. This is a minor risk due to the anticipated short timeframe involved (no more than a two month delay).

Similarly, you have a decision around when individual buildings become subject to the new rules:

- Whether this occurs for all buildings from the commencement date;
- Whether individual buildings become subject to the new rules when their individual insurance policies are renewed (**recommended**).

We recommend the new rules apply to individual buildings as insurance policies are

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renewed. This would encourage private insurers to price premiums in accordance with the risk transfer to EQC under the new rules. This approach also matches the approach taken in the EQC Amendment Act 2019.

The Cabinet paper reflects our recommended transitional provisions: a 1 June 2021 commencement date, and that the rules will apply to individual buildings as individual insurance policies are renewed or commence over the following 12 months.

If you wish to take a different approach to transitional provisions, we will amend the Cabinet paper in line with this prior to its circulation to your colleagues.

Recommended Action

We recommend that you:

Transitional provisions

- a **note** that the commencement of the proposed amendments to the EQC Act would trigger a renegotiation process between EQC and its reinsurers;
- b **agree** that the amendments should commence from 1 June 2021;
Agree/disagree.

- c **agree** that the new rules should apply to individual buildings as individual private insurance contracts are renewed and new contracts are entered into, over the 12 months following commencement of the amendments;
Agree/disagree.

Cabinet paper

- d **sign** the attached Cabinet paper.
Agree/disagree.
- e **agree** that your office begin consultation with your colleagues based on this paper.
Agree/disagree.
- f **agree** that the attached Cabinet paper, subject to any modification arising from consultation with your colleagues, be lodged by 10:00am 27 February for consideration by DEV on 4 March 2020.
Agree/disagree.
- g **refer** a copy of this report and the attached Cabinet paper to the Minister of Internal Affairs for noting, given the relationship to the Fire and Emergency New Zealand levy.

Helen McDonald
**Manager, Earthquake Commission
Policy Team**

Hon Grant Robertson
**Minister of Finance
Minister Responsible for the
Earthquake Commission**

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Office of the Minister of Finance

Office of the Minister Responsible for the Earthquake Commission

Chair, Cabinet Economic Development Committee

MIXED-USE BUILDINGS UNDER THE EARTHQUAKE COMMISSION ACT

Proposal

1. This paper seeks agreement to proposed amendments to the Earthquake Commission Act 1993 (EQC Act) to be introduced in 2020. The amendment will focus on EQC cover of mixed-use buildings, and the EQC Act definition of 'residential building' which is a key determinant of the extent of EQC cover provided for a building. The amendments intend to ensure that the EQC Act equitably accounts for homeowners'¹ use of, and interest in, common areas in mixed-use buildings.
2. s9(2)(f)(iv) [REDACTED] This paper sets out the proposed amendments to be progressed through the Bill, with a focus on the coverage of mixed-use buildings under the EQC Act, and the Act's definition of 'residential building'.
3. I have previously noted my intention to progress this work as part of reporting on the Treasury's analysis on property insurance markets (DEV-19-Min-0332 and CAB-19-MIN-0675 refer).

Executive Summary

4. The EQC scheme provides a capped level of insurance to owners of residential buildings and dwellings (such as apartments) in primarily commercial buildings.² The EQC scheme has two core elements:
 - 4.1. The scope of insurance cover provided by EQC to homeowners
 - 4.2. The manner by which EQC determines eligibility for that insurance cover.
5. I propose that both these elements of the EQC scheme should be amended through a targeted Bill to ensure that the EQC Act equitably accounts for homeowners' use of, and interest in, common areas in mixed-use buildings.
6. These changes are important in order to help ensure homeowners in mixed-use buildings are receiving an equitable amount of cover from EQC, and to help alleviate

¹ This paper uses the term 'homeowners' to refer to owners of residential dwellings in a mixed-use building.

² This paper uses the term 'commercial' to refer to buildings and areas within mixed-use buildings that are non-residential under the EQC Act. Non-residential areas in mixed-use buildings may not necessarily be commercial in nature, for example these can also include not-for-profits or incorporated societies.

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the financial pressure on homeowners in mixed-use buildings that are being exacerbated by changes in property insurance markets.

7. I propose that EQC cover for residential property in a primarily commercial mixed-use building be extended to take a “proportional” approach to covering common areas, which would currently not be covered by EQC. That is, in addition to the dwellings, appurtenant structures, and services already covered by EQC, EQC should also cover a proportion of the common areas in accordance with the residential share of the building.
8. Additionally, I propose that the residential building test set out in the EQC Act, which is used to determine whether a building is eligible for full EQC cover, be aligned with this increased scope of EQC cover. The proposed changes will improve the test by ensuring it accounts for appurtenant structures (which are already covered by EQC), as well as residential use of common areas in mixed-use buildings. Aligning the residential building test with EQC cover will also help to clarify the test and its relationship to EQC cover.

Background

Broader changes in property insurance markets are putting pressure on homeowners

9. Changes in property insurance markets are affecting multi-unit buildings (including apartment buildings). Residents are facing increasing premiums that appear to be caused by more granular risk-based pricing by insurers in the wake of earthquake events in Christchurch and Kaikōura. Earthquake strengthening requirements, while essential for our national resilience, are also adding to this mounting financial pressure for homeowners of such buildings.
10. Government insurance cover provided by EQC can make a significant financial difference to homeowners in the wake of a natural disaster event. I am mindful of the importance of ensuring that incentives are strong for developing and building resiliently in the right places, and ensuring there is adequate signalling of risk via insurance premiums. However, in my view it is also important to ensure that homeowners of mixed-use buildings are getting EQC cover appropriate to the residential use of the building, particularly in the context of Government’s broader wellbeing and urban development objectives.
11. The proposed changes alone are unlikely to significantly address insurance affordability and availability concerns in high risk areas such as Wellington, due to the limited number of buildings that are expected to be affected. Related work is underway across Government to consider insurance affordability and availability issues more broadly.

The Earthquake Commission scheme provides cover to insured homeowners

12. The EQC scheme provides a capped level of insurance to help insured homeowners to recover in the event of a qualifying natural disaster.
13. There are two different but related concepts at the core of the EQC scheme. These are:
 - 13.1. The scope of insurance cover provided by EQC to homeowners;
 - 13.2. The manner by which EQC determines eligibility for that insurance cover.

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A residential building test determines which buildings qualify for full EQC cover

14. Under the EQC Act, to qualify for EQC cover over a whole building (up to the capped amount), at least 50% of the building's floor area must be dedicated to dwellings.³ This is referred to as the 'residential building test'. If the building is below that threshold (i.e., primarily commercial), EQC will only cover the parts of the building comprising:
 - 14.1. dwellings;
 - 14.2. appurtenant structures (such as storage lockers and car parks associated with the dwellings); and
 - 14.3. associated services (such as sewerage pipes).
15. The residential building test becomes most relevant where a building is a mixed-use building. That is, a building that serves both residential and non-residential purposes, such as a multi-unit, multi-storey building with offices or retail space on lower floors and apartments on upper floors.
16. This test is an important tool for ensuring EQC does not provide full building cover for buildings that are largely commercial. This would be inconsistent with the policy goals of the EQC scheme, which focus on residential property.
17. Most mixed-use buildings are either clearly residential (>50%) or clearly commercial (<50%). It is only in a few cases where buildings fall either side of, and are close to the 50% threshold, that the current residential building test can become problematic.

Being classified as a residential building under the EQC scheme has advantages

18. Being a residential building under the EQC scheme has advantages, as EQC cover then applies to natural disaster damage to the entire building. EQC cover also applies to associated residential land.
19. In contrast, within a primarily commercial building, private insurers will cover commercial units and common areas with EQC only covering the dwellings, associated appurtenant structures or services within the building and associated residential land. The terms and conditions associated with private commercial insurance policies may be significantly different to those provided under the EQC scheme. For example, higher insurance excesses for damage.
20. Further, there is greater complexity in allocating the cost of the repair between EQC and the private insurer in cases where insurers and EQC cover different parts of a building. It can be difficult to identify which damage is covered by EQC, or by the private insurer.

³ EQC cover is currently capped at \$150,000 (excluding GST) per dwelling disclosed to the private insurer.

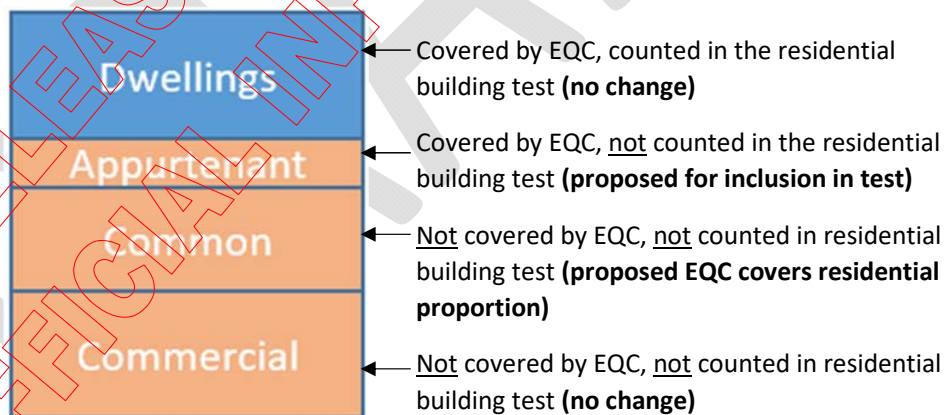
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Problem definition

The design of the current residential building test seems to result in inequitable outcomes

21. Under the current definition of 'residential building' in the EQC Act, common areas and appurtenant structures⁴ in a mixed-use building are excluded from the calculation of residential floor area when determining whether a building is at least 50% residential.
22. Stakeholders, particularly affected homeowners, have raised concerns that this approach is not an equitable representation of the actual residential ownership or use of a mixed-use building. They are concerned that the test does not take into account homeowners' use of, and interest in, areas outside of a dwelling in a mixed-use building. For example, homeowners will often need access to areas such as carparks, storage lockers and lobbies in order to make apartment living practicable.
23. Further, fully excluding appurtenant structures and common areas from being 'residential' in the residential building test means that these areas are effectively counted in the commercial share of the building, because dwellings (like apartments) need to make up at least 50% of the floor area of the building. This means that these areas, despite being used by residents who may also have an ownership interest in them, can actually make it more difficult to pass the residential building test by adding to the non-dwelling/commercial floor area in the building (Figure 1 demonstrates this effect).

Figure 1: Example of a mixed-use building where appurtenant structures and common areas contribute to the commercial proportion of the building (residential area is blue, commercial area is orange). Note the residential proportion of the building must make up 50% of the entire building to qualify for full EQC cover.



The current residential building test is difficult to understand

24. By excluding common areas and appurtenant structures, the current residential building test creates a misalignment between what areas are considered 'residential' for the purposes of the residential building test, and what areas are considered residential for the purposes of EQC cover (which includes dwellings, appurtenant structures, and services).

⁴ EQC practice takes 'appurtenant' to be that it belongs to the dwelling, in a way that is ancillary, i.e., ownership interest and used for household purposes; see section 1.3, page 6 of the EQC insurers' guide: https://www.eqc.govt.nz/sites/public_files/documents/EQCover/EQCover-Insurers-Guide-Feb2019.pdf

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25. This misalignment makes the test difficult to understand, and stakeholders have expressed confusion around how the residential building test applies and its implications for EQC cover. Through the consultation process, a lack of understanding was apparent among brokers, insurers and residential property owners regarding the test as it relates to mixed-use buildings.
26. Officials have advised me that while this lack of clarity is in part due to the confusing nature of the test itself, it is also exacerbated by a lack of clear guidance and public information about the residential building test, and particularly about how to navigate the test in more ambiguous situations where a building is not clearly over or under the 50% threshold.
27. Consequently, improved public information and guidance from EQC could go some way in addressing these issues, particularly by clarifying the workings of the residential building test and its distinction from EQC cover. However, legislation is required to change which areas are counted in the residential building test, as the relevant concepts relating to EQC cover and the residential building test are set out in the EQC Act.

Extending EQC cover for non-residential buildings

28. The most significant change I propose is the extension of EQC cover in the event that a mixed-use building does not meet the 50% threshold in the residential building test.
29. Currently, EQC will only cover the following components of a primarily commercial building:
 - 29.1. the dwelling(s);
 - 29.2. appurtenant structures used for household purposes; and
 - 29.3. services (e.g. drainage, sewerage, etc.).
30. I propose that, in addition to these existing components of a mixed-use building that are covered by EQC, for primarily commercial buildings EQC cover should also extend to the residential proportional share of the common areas. This proportional approach recognises that residents have some interest in the common property in a mixed-use building, regardless of whether the building meets the 50% threshold.
31. Extending EQC cover in this way will likely increase the cover and compensation from EQC to homeowners in primarily commercial buildings in the wake of a natural disaster event. This could be the case for minor, moderate, or significant events for various reasons. For example, this could range from minor cosmetic damage to a large common area, or structural damage to a common building element that is currently not considered residential.

Implementing a more equitable residential building test

32. My proposal to amend the residential building test is based on aligning the test with the extended scope of EQC cover. In taking a proportional approach to the residential building test, the test would make a direct comparison of the residential and commercial floor areas in the building, and then in effect allocate common area to the residential area on a pro-rata basis. This means:
 - 32.1. the area of the **dwelling** would be allocated to the residential area (status quo);

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- 32.2. the area of the **appurtenant structures** such as resident carparks and storage areas would also be allocated to the residential area (these areas are, in effect, allocated to the commercial area under the status quo); and
 - 32.3. a **proportion of the total common area** would in effect be allocated to the residential area (these are allocated to the commercial area under the status quo).
33. The practical effect of this approach would be a more equitable residential building test, as it will better account for the residential use of a building. Further, some increase in the floor area that is counted in the 50% test will likely cause some currently commercial buildings to become residential, therefore extending EQC cover to the entire building and associated land.

Ensuring EQC does not take on undue commercial liability

34. I have considered whether, instead of the proposed 'proportional approach', all common areas used by the residents could be counted as residential for the residential building test. This would mean that common areas would contribute to the residential proportion of the building, rather than the commercial as is the status quo.
35. I have decided against this approach primarily because of the risk that including all common areas could enable some buildings to qualify as 'residential' that include substantial amounts of commercial space. For example, hotels with some permanent residents could become eligible for EQC cover over the whole hotel, if large shared spaces such as lobbies and extensive common areas are considered residential.
36. In my view, including all common areas would create an inequitable effect for mixed-use buildings as it would over-represent the residential proportion of the building. As the purpose of the EQC scheme is to provide cover for residential property, it is important to note that the purpose of the residential building test is not only to ensure homeowners get adequate cover from EQC, but also to ensure EQC does not take on undue commercial liability.

Expected beneficiaries

37. As most mixed-use buildings are either clearly residential (>50%) or clearly commercial (<50%), it is likely that only a small number of non-residential buildings will be affected by these proposed changes.
38. The primary beneficiaries of the policy change are expected to be:
- 38.1. homeowners whose buildings are commercial under the current residential building test and become residential under a new test; and
 - 38.2. homeowners in primarily commercial buildings under the proposed definition who receive increased cover from EQC due to the new inclusion of the residential share of common areas.
39. The primary effects for homeowners whose buildings change from commercial to residential would likely be:
- 39.1. EQC accepting claims for damage in common and commercial areas of the building (transfer of liability);
 - 39.2. a lower private insurance claims excess on damage outside areas currently covered by EQC; and

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- 39.3. EQC covering more of the associated land, as residential buildings receive additional land cover from EQC.
40. By enabling more buildings to meet the residential building test, EQC would cover a greater proportion of the natural disaster risk for mixed-use buildings.
41. The primary effects for homeowners whose buildings remain primarily commercial is that EQC would now cover a proportion of damage in common areas of the building that would not previously have been covered by EQC.
42. These changes are important in helping ensure homeowners in mixed-use buildings are receiving an equitable amount of cover from EQC, and to help alleviate the financial pressure on homeowners in mixed-use buildings that are being exacerbated by changes in property insurance markets.

Related work underway to support insurance affordability and availability

43. Issues around the residential building test and eligibility for EQC cover are becoming more salient due to wider changes in property insurance markets. More granular risk-based pricing by insurers and earthquake strengthening requirements are adding to financial pressure for homeowners of such buildings.
44. These market and regulatory changes mean there is more at stake in cases where a building does not meet the residential building test, and does not receive full cover by EQC. With insurance costs rising, the potential reduction in excesses that can come from being fully covered by EQC can make a significant financial difference to homeowners in the wake of a natural disaster event.
45. There is a risk that these pressures will undermine other initiatives to incentivise higher density urban development and living, such as the National Policy Statement for Urban Development under the Resource Management Act 1991, and related work being progressed through the Urban Growth Agenda and Kāinga Ora. Initiatives such as these are critical for our response to the land scarcity that is in part driving the housing crisis that faces New Zealand at present.
46. Other work that is already underway across the public and private sectors to help alleviate financial pressures on multi-unit buildings includes:
- 46.1. Policy advice by the Treasury on options for changes to the Earthquake Commission (EQC) cap or s9(2)(f)(iv)
- 46.2. Cabinet Business Committee approval of the Residential Earthquake Prone Building Financial Assistance Scheme. This Scheme will provide low cost loans to owner occupiers of units in earthquake prone buildings who meet the hardship criteria described in the Scheme settings;
- 46.3. Advice by the Inland Revenue Department (IRD) and the Treasury on tax relief (depreciation) for earthquake strengthening work;
- 46.4. Development of guidance by the Ministry of Housing and Urban Development (MHUD) on how body corporates can comply with the requirement under the Unit Titles Act 2010 to insure buildings to full insurable value;
- 46.5. s9(2)(ba)(i)

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s9(2)(ba)(i)

Relationship to the Fire and Emergency New Zealand levy

47. The current Fire and Emergency New Zealand Act 2017 uses the definition of 'residential building' in the EQC Act to calculate the Fire and Emergency New Zealand (FENZ) levy.⁵ The levy regime is therefore linked to the EQC Act definition for the duration of the transitional period for the FENZ Act (currently, until 1 July 2024).⁶ The Minister of Internal Affairs will consider whether any savings provisions will be required so that the current EQC Act residential building definition continues to apply for the FENZ levy.

Implementing the change

48. Should Cabinet agree to the proposed amendments to the EQC Act as set out in this paper, I propose the following timing for the legislation:
- 48.1. Drafting instructions to PCO: March 2020
 - 48.2. LEG and Cabinet for approval and introduction: May 2020
 - 48.3. Introduction of the Bill: May 2020
 - 48.4. Select Committee report back: Early 2021
 - 48.5. Date of enactment: Early 2021
 - 48.6. Date of commencement: 1 June 2021.
49. The proposed amendments will commence from 1 June 2021, to align with renewal of EQC reinsurance contracts, which will need to be renegotiated in line with the new rules. The new rules will apply to individual buildings as individual insurance policies are renewed or new contracts are entered into, so that private insurers have the opportunity to price premiums based on the changes.

Review of the EQC Act

50. A broader review of the EQC Act has already started and is planned to continue during 2020 and 2021. It will be informed by the Public Inquiry into EQC, which is due to report by 31 March 2020. The review is intended to consider design features of the EQC, and the impact of this proposed amendment would be considered as part of that wider work.
51. Amending the EQC Act to better provide for mixed-use buildings should take place ahead of the review to ensure homeowners have access to adequate cover from EQC should a natural disaster event occur prior to the implementation of broader changes to the Act.

⁵ cl 24, Schedule 1, Fire and Emergency New Zealand Act 2017

⁶ The Fire and Emergency New Zealand (Levy) Amendment Act 2019 passed into legislation on 7 May 2019 and changed the commencement date for new levy provisions in the Fire and Emergency Act 2017 (sections 80 to 140) to 1 July 2024.

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Consultation

52. The Treasury undertook targeted stakeholder consultation on this issue and the available options over December 2019 to early January 2020.
53. Those consulted included EQC, Ministry of Housing and Urban Development (MHUD), Department of Internal Affairs (DIA), Insurance Council of New Zealand, IAG NZ, AON NZ, the Body Corporate Chairs Group, Survey and Spatial New Zealand (formerly New Zealand Institute of Surveyors), New Zealand Institute of Valuers, Wellington City Council, Crombie Lockwood, and the Marion Square Body Corporate.⁷
54. Stakeholders presented a range of differing views on the topic and various options, but in the main were broadly supportive of the policy intent. The views expressed by stakeholders have informed the Treasury's analysis and my decisions.
55. EQC, MHUD, DIA, MBIE and the Parliamentary Counsel Office have been consulted on this paper.
56. The Ministry for the Environment has been consulted and confirm that the Climate Implications of Policy Assessment (CIPA) requirements do not apply to this proposal as the threshold for significance is not met.

Financial Implications

57. The Treasury and EQC have informed me that implementing this proportional approach to common areas would not affect the EQC cap,⁸ nor the EQC levy. The proposals would only have financial consequences for EQC following a significant natural disaster event, as the amount EQC would pay in a claim for primarily commercial buildings would increase where there was damage to common areas not previously covered by EQC.
58. Due to data limitations, EQC is unable to model the financial impacts of this change, but expects it would be an increase in compensation paid compared to the status quo. The increased EQC entitlements (and hence costs) will be significant for some affected building owners. However, as the change is expected to affect a very small fraction of buildings insured by EQC, the increase in costs is expected to be very small as a proportion of total EQC claims.
59. I am comfortable with the increased liability for EQC as it is consistent with the intent of the EQC Act, which is to provide cover for insured homeowners, including owners of dwellings in mixed-use buildings that are primarily commercial.

Legislative Implications

60. Legislation is required to give effect to the proposed changes, as the relevant concepts are described in the EQC Act.

61. s9(2)(f)(iv)

7 The Marion Square Body Corporate made a submission on the issue of non-residential mixed-use to the Select Committee that considered the Bill that became the Earthquake Commission Amendment Act 2019.

8 The EQC cap would continue to be calculated based on the number of residential dwellings within a building disclosed to

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62. The current Act was amended in February 2019. This proposal is required if the proposed changes are to be in place if a significant claims event occurs while the more extensive EQC legislative review processes are still under way (that longer process is likely to take several years).
63. As outlined above, it is anticipated that the EQC Act will be amended or replaced following the Inquiry.
64. The Bill's provisions are expected to be binding on the Crown. (The current EQC Act is binding on the Crown).

Impact Analysis

65. The impact analysis requirements apply to proposals in this paper. An impact assessment has been prepared and is attached as Annex 1.
66. A quality assurance panel with representatives from the Treasury has reviewed the 'Coverage of mixed-use buildings under the Earthquake Commission Act' Regulatory Impact Statement (RIS) prepared by the Treasury and dated February 20 2020.
67. The panel considers the RIS partially meets the quality assurance criteria.

Human Rights

68. There are no human rights implications of the proposals in this paper.

Gender Implications

69. There are no gender implications of the proposals in this paper.

Disability Perspective

70. There are no disability perspective implications on the proposals in this paper.

Publicity

71. I intend to announce my intention to introduce an Earthquake Commission Amendment Bill, subject to Cabinet agreement to the proposals set out in this paper.

Proactive Release

72. A version of this paper, along with key advice papers received from the Treasury on the coverage of mixed-use buildings under the EQC Act will be published on the Treasury's website following Cabinet agreement to the proposals set out in this paper. These papers will be published subject to withholdings that are consistent with the Official Information Act 1982.

Recommendations

I recommend that the Committee:

Policy

1. **note** the EQC scheme provides a capped level of insurance cover (EQC cover) to allow insured homeowners to recover in the event of a qualifying natural disaster;


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2. **note** that to qualify for EQC cover over a whole building, at least 50% of the building's floor area must be dedicated to dwellings (residential building test). If a building is below that threshold, cover will only be for the parts comprising the:
 - 2.1. dwellings;
 - 2.2. appurtenant structures (such as storage lockers and car parks associated with the dwellings); and
 - 2.3. associated services (such as sewerage pipes);
3. **note** that the residential building test and EQC cover do not fairly reflect the homeowners' use of, and interest in, a mixed-use building, because:
 - 3.1. the residential building test only takes into account the floor area of the dwellings themselves, and not the appurtenant structures or common areas the homeowners have use of and an interest in; and
 - 3.2. if the residential building test is not met, no cover is provided for common areas that the homeowners have use of and an interest in;
4. **agree** to amend the residential building test to account for the floor area of the dwellings, appurtenant structures, and the homeowners' proportionate interest in common areas;
5. **agree** that where a building is below the 50% threshold in the residential building test, EQC cover will extend to common areas on a proportionate basis, determined using the residential floor area in the building;
6. **note** that, as most mixed-use buildings are either clearly above or below the threshold in the residential building test, it is likely that only a small number of buildings will be affected by the proposed change to that test;

Fiscal

7. **note** that the proposals have no impact on EQC levy revenues. In a significant natural disaster event, they will increase the expected value of claims settlements;
8. **note** that the proposals have no fiscal effects for operating balance, total Crown cash flows or core Crown net debt (assuming no significant natural disaster events);

Legal

9. s9(2)(f)(iv)

10. **invite** the Minister Responsible for the Earthquake Commission to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above proposals by amendments to the EQC Act and any other legislation requiring consequential amendment as a result of the changes proposed in this Cabinet paper;
11. **authorise** the Minister Responsible for the Earthquake Commission to make decisions on transitional provisions and other policy matters that arise as the Bill is drafted;

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12. **invite** the Minister Responsible for the Earthquake Commission to bring a draft Earthquake Commission Amendment Bill to Cabinet Legislation Committee;
13. **note** the Minister Responsible for the Earthquake Commission's intention to introduce an Earthquake Commission Amendment Bill in May 2020.

Publicity

14. **note** the Minister Responsible for the Earthquake Commission will announce his intention to introduce an Earthquake Commission Amendment Bill, subject to Cabinet agreement to the proposals set out in this paper.

Authorised for lodgement

Hon Grant Robertson

Minister of Finance

Minister Responsible for the Earthquake Commission

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Treasury Report: Earthquake Insurance Update: March 2020

Date:	11 March 2020	Report No:	T2020/526
		File Number:	TY-2-1-17-3

Action sought

	Action sought	Deadline
Hon Grant Robertson Minister Responsible for the Earthquake Commission	Note the state of play and next steps on earthquake insurance workstreams as set out in the attached status report.	Prior to your meeting with officials at 3:30pm on 17 March 2020.

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Danijela Tavich	Analyst, Earthquake Commission Policy Team	s9(2)(k)	N/A (mob) ✓
Helen McDonald	Manager, Earthquake Commission Policy Team	s9(2)(g)(ii)	

Minister's Office actions (if required)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: Yes (attached)

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Treasury Report: Earthquake Insurance Update: March 2020

Executive Summary

You are scheduled to meet with officials to discuss earthquake insurance matters at 3:30pm on 17 March 2020.

The proposed agenda items for discussion are:

- Update on the release process for the Public Inquiry into EQC
- The scope and timing of a review of the EQC Act, and the policy rationale of the current EQC scheme, and
- Update on upcoming work on EQC and climate change.

Attached is a status report providing an update on the current state of play and the next steps on various earthquake insurance workstreams.

Recommended Action

We recommend that you:

- a **note** the state of play and next steps on earthquake insurance workstreams as set out in the attached status report.

Helen McDonald
Manager, Earthquake Commission Policy Team

Grant Robertson
Minister Responsible for the Earthquake Commission

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Update on Earthquake Insurance Workstreams: March 2020

Priority area and state of play	Upcoming milestones and advice		
	March	April	May onwards
Property insurance <ul style="list-style-type: none"> We will provide you with advice on 16 April on increasing the EQC cap. We are meeting with insurers on 18 March in Auckland to consult them. We will report to you on feedback from consultation on 25 March, alongside preliminary advice on shifting EQC to a second loss per-risk reinsurer (i.e. taking the risk above a given cost per dwelling). The Treasury is developing advice on facilitating better public understanding of the relationship between property insurance and natural hazard risks. We will soon consult with key stakeholders to gain a better understanding of the issues to inform potential options. 	<ul style="list-style-type: none"> 25 March – Report to you on feedback from further consultation with insurers and other stakeholders on changes to the EQC cap or s9(2)(f)(iv) 26 March – the Treasury will provide advice on facilitating better public understanding of property insurance and natural hazard risks. 	<ul style="list-style-type: none"> 16 April – Advice on increasing the EQC cap. 	<ul style="list-style-type: none"> May – Cabinet paper seeking approval to increase the EQC cap (if required).
Earthquake Commission <ul style="list-style-type: none"> We continue to monitor the progress made by EQC acting as agent for Southern Response claims management activities. We met with homeowner representatives for their feedback on the on-sold package in March. This will inform our advice on the package later this month. We continue to assess the Crown Guarantee funding requirement. EQC has decided to disestablish the roles of DCE Systems Transformation and DCE Readiness and Recovery. Four new Commissioners were appointed to the Board on 1 March 2020. The Treasury will hold induction sessions on March 10 and 11 with the new Commissioners. The Chair has made an announcement regarding his health issues and has indicated that he plans to remain in his position until at least after the public release of the report of the Public Inquiry into EQC. 	<ul style="list-style-type: none"> Monitoring Update Report. March / April - Initial sample findings and update on Christchurch drainage investigation. EQC second quarter performance report ending 31 December 2019. 20 March – policy update on the on-sold over-cap ex-gratia policy. 	<ul style="list-style-type: none"> April – Review of December 2019 Insurance Liability Valuation Report. April / May – Advice on the 2020/21 Statement of Performance Expectations and Statement of Intent. 	<ul style="list-style-type: none"> Early June – Potential for Deficiency Funding Deed payment.
Future of the Earthquake Commission policy work <ul style="list-style-type: none"> A further EQC Amendment Bill is expected following the final report from the Public Inquiry into the Earthquake Commission. 	<ul style="list-style-type: none"> 12 March – Report describing the EQC intervention model to provide context for forthcoming advice to you on potential changes to the EQC scheme, including the report of the Public Inquiry and advice on the affordability and availability of residential property insurance. 12 March – Advice on EQC bill scope and timing. Late March – Information report on EQC and hazards affected by climate change. 		

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Priority area and state of play	Upcoming milestones and advice		
	March	April	May onwards
<p>Coverage of mixed-use buildings under the Earthquake Commission Act</p> <ul style="list-style-type: none"> A Cabinet paper outlining your proposal to amend the EQC Act to extend EQC cover for mixed-use buildings and amend the residential building definition has been lodged for DEV on 18 March 2020. We have provided you with talking points to support this. Subject to Cabinet approval on 23 March, we will issue drafting instructions to PCO. We propose that the Cabinet paper and key advice papers should be proactively released on the Treasury's website. The release of the Cabinet paper is in line with Cabinet Office Circular CO(18)4. We will provide you with a report seeking your approval to this. 	<ul style="list-style-type: none"> 18 March – DEV considers proposals. 23 March – Cabinet. 24 March – Report on proactive release of Cabinet paper and key documents. 25 March – Drafting instructions issued to PCO. 	<ul style="list-style-type: none"> April – PCO drafting. 	<ul style="list-style-type: none"> May – Bill provided to the Ministry of Justice for an assessment of consistency with the New Zealand Bill of Rights Act. May – Bill before LEG Committee and Cabinet for approval for introduction. Late May – Bill introduced. Early 2021 – Select Committee report-back. Early 2021 – Final policy approvals obtained from Cabinet for any substantive SOP to Bill. Early 2021 – Bill enacted. 1 June 2021 – Bill commences.
<p>Public Inquiry into the Earthquake Commission</p> <ul style="list-style-type: none"> s9(2)(h) Treasury will be coordinating the preparation of a government response to the report over April, with input from relevant agencies. You have indicated that, s9(2)(h), you will report to Cabinet based on the government response on 28 April 2020, and that you will table the report on 30 April 2020. You are scheduled to meet Dame Silvia Cartwright to discuss the report on 2 April 2020. The Minister for Greater Christchurch Regeneration will also be attending. Treasury will provide talking points to support this meeting, based on the content of the Inquiry's final report. 	<ul style="list-style-type: none"> 27 March – the Inquiry intends to present its report to the Governor-General. 	<ul style="list-style-type: none"> 31 April – talking points for meeting with Dame Silvia Cartwright provided. 2 April – Meeting with Dame Silvia Cartwright on the Inquiry report. 6 April – Oral item to Cabinet on the report. 9 April – draft Cabinet paper on a government response provided for your consideration. 28 April – Cabinet consideration of a government response to the report. 30 April – Report tabled in the House. 	

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Priority area and state of play	Upcoming milestones and advice		
	March	April	May onwards
<p>Southern Response</p> <p>Southern Response workstreams:</p> <ul style="list-style-type: none"> • Significant litigation: Following feedback from the Minister, officials have been engaging with Southern Response and are preparing a report on next steps. • Upcoming events relating to key litigation: <ol style="list-style-type: none"> 1. <i>Dodds</i> – The Crown took control of the proceedings in 2019 and through appeal of the High Court decision, is testing key issues to provide the basis for wider decision-making. Court hearing: 5-6 May 2020 2. <i>Ross</i> – Representative action s9(2)(g)(i) still in preliminary stages. Hearing an appeal of opt-in / opt-out issue being heard in Supreme Court: 23-24 March 2020. • Business reporting/accountability documents: A draft letter of expectations (LOE) has been prepared for Ministers to consider. Southern Response has begun its planning round and the LOE will feed into this. With a new Statement of Intent recently completed, only an updated Statement of Performance Expectations is expected this round. • Post transition: The transition was largely completed in December 2019 and the company appears to be operating effectively under its new structure. We continue to monitor progress. 	<ul style="list-style-type: none"> • Letter of Expectations from shareholding Ministers to feed into 2020 business planning round (draft currently with Ministers). • Report on performance for quarter ending 31 December 2019. • Report providing background for meeting with EQC Chair. • Report on significant litigation next steps. • 23-24 March – Supreme Court hearing of appeal against Court of Appeal opt-out decision in <i>Ross</i>. 		<ul style="list-style-type: none"> • 5-6 May – Court of Appeal hearing re <i>Dodds</i>. • Preparations document (regarding litigation). • By 31 May – Draft Statement of Intent and Statement of Performance Expectations for 1 July 2020 onwards. • Report on performance for quarter ending 31 March 2020.
<p>Claims resolution system</p> <p>The system constitutes a number of areas including:</p> <ul style="list-style-type: none"> • The quarterly report of insurance claims • Canterbury Earthquake Insurance Tribunal (The Tribunal) • Greater Christchurch Claims Resolution Service (GCCRS) • Cases with presidential value and declaratory judgements • On-sold properties. 		<ul style="list-style-type: none"> • Progress report on March quarter Canterbury insurance claims settlement. • Minister Woods, along with officials from MBIE, Ministry of Justice, and the Treasury, is scheduled to meet with the Chair of the Tribunal on 17 April 2020 to discuss how the current claims resolution system is working, including whether there are any gaps in the system, to ensure homeowners are getting the support they need. 	

COVID-19 impacts for Waka Kotahi NZ Transport Agency's major contractors and supply chain

Reason for this briefing	To provide you with advice on a proposal that Waka Kotahi NZ Transport Agency is progressing to advance contractual payments (Advanced Entitlement Payment) for its major contractors affected by the move to Alert Level Four in response to COVID-19.
Action required	Consider officials' advice on Waka Kotahi NZ Transport Agency's Advanced Entitlement Payment, including the wider implications of using this type of support.
Deadline	7 April 2020.
Reason for deadline	N/A.

Contact for telephone discussion (if required)

Name	Position	Telephone	First contact
Bryn Gandy	Deputy Chief Executive, System Strategy and Investment	s9(2)(g)(ii)	
Robert Anderson	Principal Adviser, Governance and Commercial, Ministry of Transport		✓
David Taylor	Manager, National Infrastructure Unit, The Treasury		
Gerald Lee	Analyst, National Infrastructure Unit, The Treasury		✓

MINISTER'S COMMENTS:

Date:	31 March 2020	Briefing number:	OC200284 T2020/827
Attention:	Hon Grant Robertson (Minister of Finance) Hon Phil Twyford (Minister of Transport)	Security level:	In-confidence

Minister of Transport's office actions

- | | | |
|---------------------------------------|---|--|
| <input type="checkbox"/> Noted | <input type="checkbox"/> Seen | <input type="checkbox"/> Approved |
| <input type="checkbox"/> Needs change | <input type="checkbox"/> Referred to | |
| <input type="checkbox"/> Withdrawn | <input type="checkbox"/> Not seen by Minister | <input type="checkbox"/> Overtaken by events |

Purpose

1. This report provides you with advice on the implications of Waka Kotahi NZ Transport Agency (the Transport Agency) advancing contractual entitlement payments for major contractors affected by the move to Alert Level Four in response to COVID-19.

Impact of Alert Level Four on the Transport Agency's capital works

2. In response to moving to COVID-19 Alert Level Four, the Transport Agency advised its major contractors that all non-essential construction projects would be temporarily shut down while the alert level is maintained. Essential maintenance work has continued.
3. The Transport Agency has about s9(2)(i) of capital projects that it stopped in response to moving to COVID-19 Alert Level Four. As a result, during this period there is no cash flow going into these projects, contractors and wider supply chain that deliver these projects, for the period that the alert level is retained.
4. The shut down of major capital projects is expected to create significant financial and cash flow pressures for the Transport Agency's major contractors and the wider supply chain. The Transport Agency is concerned that its major contractors may need to scale their workforce capacity to manage these cost pressures without further support.

Proposal for Advanced Entitlement Payments

5. In order to assist its contractors to retain their workforce, the Transport Agency has developed an Advanced Entitlement Payment (AEP) to cover direct labour and overhead costs that contractors would be entitled to claim under their existing contracts. The payment is designed to be maintained for a four week period, with the cost to the National Land Transport Fund (NLTF) estimated to be between s9(2)(i).
6. According to the Transport Agency, suppliers are entitled, under contract, to recover costs related to wages. The AEP payment will cover only a portion of that total entitlement for a supplier. This avoids the full upfront cost of the entitlement while providing some financial support so that the Transport Agency's contractors can maintain their workforce capacity.
7. The Transport Agency has not requested formal Ministerial agreement under section 161 of the Crown Entities Act 2004 that applies when an entity acquires financial products and provides guarantees. The Transport Agency is essentially treating the AEP as a procurement issue, managing and renegotiating existing contractual entitlements, that the Transport Agency Board has the mandate to make decisions on.
8. The Transport Agency has advised that the conditions of making the advanced contractual payment will include the following:
 - 8.1. contractors retain all project resources over the stand down period to enable remobilisation
 - 8.2. contractors commit to treating those in their supply chain with regard and make efforts to minimise the stand down impact to them and their liquidity
 - 8.3. contractors include the Transport Agency in any major decisions with respect to their supply chain which may impact remobilisation
 - 8.4. where any COVID-19 Government wage subsidies and the AEP have been claimed, the wage subsidy amount is to be deducted from the AEP.

9. The Ministry understands that the Transport Agency has had to confirm the AEP with its contractors today in order to prevent these contractors taking decisions to scale their workforce capacity. The Transport Agency is able to take this action as it is part of the agency's role in managing its normal contractual obligations with its contractors.

Wider implications of the Transport Agency's Advanced Entitlement Payment

10. Officials support the Transport Agency's AEP proposal. Delivery of major transport capital projects will be a critical lever for providing stimulus to the economy in response to COVID-19. It is important that the Transport Agency's contractors and wider supply chain are ready to respond once the alert level is reduced. However, officials have identified some key issues, set out below, that you should take account of in considering the Transport Agency's AEP proposal.

Ensuring co-ordinated engagement across agencies

11. Officials have worked to ensure the Transport Agency's proposal has been considered in the context of other agencies managing contractual impacts in response to the change in the alert level, particularly those in the Construction Housing Accord.
12. Kainga Ora is supportive of the Transport Agency's proposal but indicated that it does not necessarily translate into Kainga Ora's operating context, reflecting differences in supply chain profiles, contracts and the construction pipeline. Kainga Ora is taking its own steps to support its contractors and supply chain, particularly in providing cash flow (by covering actual and reasonable on and offsite costs) and contractual relief, which align with the nature of its contracts and contractors.
13. The Ministry of Business, Innovation and Employment (MBIE) and the Ministry of Housing and Urban Development (MHUD), InfraCom and the Construction Accord are providing further advice to Accord Ministers tomorrow on procurement guidance to manage these kind of contractual management issues across the system. The Transport Agency's proposal has been shared with the Construction Sector Accord agencies.

Prolonged Alert Level Four

14. Retaining the current alert level for a period beyond four weeks could present a challenge in maintaining the AEP. The Transport Agency would need to re-evaluate whether it would be appropriate and cost effective to maintain the payment if this was to occur. It is also possible that the country, or specific regions, could move between alert levels. This could create an added complexity in managing the associated impacts on the delivery of capital projects, including the major contractors involved in the delivery of these projects.

Precedent setting

15. The Transport Agency considers that the AEP proposal could have wider application for its co-investment partners, such as local councils. There is a risk that some councils may not have the capacity to accommodate making these payments in the short-term. At the same time, land transport revenue is projected to decline in response to COVID-19, so careful consideration will be required as to how this liability is managed within a more constrained funding environment.
16. The steps the Transport Agency is taking could set a precedent and expectation that other agencies, particularly local councils, will take the same action. There is a risk that making these types of payments could generate significant financial challenges for some councils

depending on their financial context, the nature of the contracts they use and their construction pipeline.

17. MBIE, MHUD and the Construction Accord will be considering precedent issues in their forthcoming advice on procurement guidance.

Viability of contractors

18. The Transport Agency's proposal is intended to alleviate costs pressures on major contractors so they can retain their workforce. It is expected that the Transport Agency's proposal will deliver on this outcome as the advanced payment will directly address the immediate wage pressures amongst the agency's major contractors.
19. However, the Transport Agency's contractors are likely to experience other cost pressures, such as lost time, the cost of plant and equipment, and debt servicing, for example. The Transport Agency has signalled that significant financial constraints and tight margins is what its major contractors may experience.

Increased pressure on land transport revenue

20. The wide number of projects affected by the current alert level will likely see a corresponding increase in claims made by contractors. It is expected that these projects will likely experience significant cost pressures in being able to manage the payment of contractual entitlements.
21. Where these payments are made, it is expected to result in increasing pressure on the NLTF. It is important that the Transport Agency is undertaking work to assess how these potential flow on cost pressures can be managed in the context of wider impacts of COVID-19 on the land transport revenue base.

Next steps

22. The Transport Agency is in the process of implementing the AEP for its contractors. Your approval is not needed for the NZTA's proposal, but this advice provides a basis to endorse the proposal, understand its potential impact, and sets out that it relates to the NZTA's specific contractor relationships. Other procurers may have different options available to them.
23. Officials are also working to develop advice for Joint Ministers on the broader impacts of COVID-19 for the NLTF and the Transport Agency, particularly with respect to its regulatory function. This advice will inform broader COVID-19 recovery work as part of the All-of-Government response underway. Specific focus is also being given to the role that the Transport Agency and the wider land transport system can play in providing economic stimulus in response to COVID-19.

Recommendations

Officials recommend that you:

- (a) **note** that the Transport Agency is implementing a proposal to advance a portion of contractual entitlement payments for its major contractors to cover associated labour for non-essential capital projects that have been temporarily delayed as a result of moving to Alert Level Four in response to COVID-19
- (b) **note** that, based on the information the Transport Agency has provided, officials support the Transport Agency's Advanced Entitlement Payment, but have signalled some key issues for Joint Ministers to take account in considering this type of support from a system perspective
- (c) **note** that the Transport Agency are not required to seek formal Ministerial agreement under the Crown Entities Act for the Advanced Entitlement Payment proposal.



Bryn Gandy
Deputy Chief Executive, System Strategy and Investment
Ministry of Transport



David Taylor
Manager, National Infrastructure Unit
The Treasury

Hon Phil Twyford
Minister of Transport

Date:

Hon Grant Robertson
Minister of Finance

Date:

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Reference: T2020/949 SH-11-4-3-4-7 (Property Insurance Markets)

Date: 9 April 2020

To: Minister of Finance (Hon Grant Robertson)
Minister Responsible for the Earthquake Commission (Hon Grant Robertson)

Deadline: None

Insurer responses to COVID-19

Many insurers are providing relief to customers in financial hardship due to COVID-19. Insurers' actions appear to be reasonable and we do not recommend government intervention at this stage. We will continue to monitor insurer responses and report to you on any key developments. You may wish to write to the peak bodies in the insurance industry to encourage insurers to continue to support their customers.

Insurance is a significant cost for businesses and consumers

Insurance is a material cost for many consumers and businesses. For consumers, insurance makes up around 4.8 percent of average weekly household expenditure, including dwelling, contents, health, life and vehicle insurance (Statistics New Zealand, household expenditure statistics 2019). This is around \$3,400 annually for the average household. Insurance expenditure is roughly equivalent to average household energy costs (electricity, gas, etc). We have received reports that most insurers are seeing a moderate increase in calls relating to financial hardship. Health, life and unemployment insurance policies will generally provide cover for those who have contracted COVID-19 and for some other COVID-19 related claims.

For businesses, insurance is around one percent of annual expenditure for small firms with annual turnover between \$250,000 and \$1 million. For larger businesses, insurance is less than one percent of annual expenditure. Business interruption, building, vehicle and indemnity insurance are expected to be the main insurance costs for businesses. Most businesses are unable to claim against their business interruption insurance for losses due to COVID-19 as most policies contain exclusions relating to losses caused by infectious diseases notifiable under the Health Act 1956. Anecdotal reports indicate some businesses were unaware of this exclusion.

Many insurers are providing relief to customers due to COVID-19

Many insurers have developed relief packages to support customers in financial hardship due to COVID-19. The types of relief offered includes:

- s9(2)(ba)(i)

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- s9(2)(ba)(i)

-
-

Annex 1 sets out detailed information on relief provided by general insurers. This information was provided by the Insurance Council of New Zealand (ICNZ) on a commercial-in-confidence basis. ICNZ has requested that it not be discussed publicly.

You may wish to write to insurance industry peak bodies to support insurer relief for customers

You may wish to write to insurers, via ICNZ (fire and general insurance), the Financial Services Council (life, income and disability insurers), and the Health Funds Association (health insurers) to encourage continued support for customers. A letter is attached as **Annex 2**. The Treasury will continue to monitor insurer responses and report to you if any significant issues arise.

If requested, we can provide further advice on regulatory options (such as creating a minimum period during which insurers cannot cancel policies for non-payment). We do not recommend work on regulatory options at this stage. Insurers appear to be taking reasonable steps to support their customers. Regulation would shift costs onto insurers and add pressure to the industry at a challenging time. While the Reserve Bank has no immediate concerns about insurer failure as a result of COVID-19, it advises that insurers are facing stresses on numerous fronts, such as lower returns on investments, reducing new business, as well as operational challenges. The Reserve Bank is monitoring the situation.

Sam Thornton, Senior Policy Analyst, Financial Markets, s9(2)(k)
Robbie Taylor, Manager, Financial Markets, s9(2)(k)

Annex 1 deleted under s9(2)(ba)(i)

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Annex 2: Letter to insurers to support measures to provide relief

Tim Grafton
Chief Executive
Insurance Council of New Zealand

Richard Klipin
Chief Executive
Financial Services Council

Roger Styles
Chief Executive
Health Funds Association of New Zealand

Dear Tim, Richard and Roger

As you know, COVID-19 has created an unprecedented economic shock that is causing financial stress and uncertainty for many New Zealanders.

I am pleased that insurers are playing their part to support customers in financial hardship due to COVID-19. Insurers play a critical role in times of crisis to protect the livelihoods, assets, and income of New Zealand households and businesses. New Zealanders are likely to face many new challenges in the coming days and months, including financial hardship and changing circumstances.

I appreciate that the insurance industry is responding to a number of issues resulting from COVID-19. The Government and financial market regulators have deferred a significant number of regulatory initiatives to allow financial institutions to focus on their business and supporting their customers in response to the COVID-19 crisis.

I strongly encourage all insurers to continue to support their customers by considering how they can provide relief to consumers and businesses in financial hardship, such as through payment deferrals and restraint on premium increases.

Ngā mihi

Hon Grant Robertson
Minister of Finance
Minister Responsible for the Earthquake
Commission

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Treasury Report: Options for EQC Reinsurance Programme

Date:	9 April 2020	Report No:	T2020/891
		File Number:	CM-1-3-15-5-4 (Reinsurance Programme)

Action sought

	Action sought	Deadline
Hon Grant Robertson Minister of Finance	Note that, prior to EQC's reinsurance programme being finalised on May 1 2020, it is prudent to assess the Crown's risk appetite. Either: Take no action (Treasury preferred) which would reserve the right to express risk preference ahead of the 2021/22 reinsurance programme, or Sign and send the attached letter to EQC Board Chair to express a reduced risk appetite and asking that the Board consider Treasury's views on the options presented.	None
		15 April 2020

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Jennifer Xie	Analyst, Financial Institutions	s9(2)(k)	N/A (mob) ✓
Joseph Sant	Manager, Financial Institutions	s9(2)(g)(ii) (mob)	

Minister's Office actions (if required)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: Yes (attached)

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Treasury Report: Options for EQC Reinsurance Programme

Purpose of Report

1. In light of the current economic climate, and fiscal pressures faced by the Crown, this report provides options for the Earthquake Commission (EQC) to consider for its 2020/21 reinsurance programme. The issues raised meet the interest of both your Finance portfolio and Earthquake Commission portfolio.
2. The briefing presents options and associated implications to reduce the Crown's contingent liabilities. The report includes reinsurance pricing and placement analysis, and fiscal impacts to EQC's and the Crown's budget. The timing of the briefing is to highlight that EQC will finalise its 2020/21 reinsurance programme by 1 May 2020.
3. The Treasury has a soft preference that the current programme provides sufficient coverage for the year ahead, relative to the fiscal impacts. This means we do not recommend an action at this time, but have provided a draft letter should you wish to communicate a lower risk tolerance to the Board.
4. Exploration of options to manage the Crown's contingent liabilities is prudent at this time, even if no action is taken. The benefit of EQC increasing its reinsurance programme would be to increase resilience against uncorrelated risks to the Crown balance sheet. The financial cost of this would slow down the future rebuild of the Natural Disaster Fund (NDF) and could impact net debt (although this is uncertain).
5. If you agree with Treasury's recommendation, there will be an opportunity to gather further information about the impacts of Covid-19 and the Crown's fiscal headroom in order to inform the 2021/22 reinsurance programme. Your risk preference can then be communicated to the EQC Board in the annual letter of expectations. This is currently due after the general election but could be provided earlier if required.
6. Alternatively, you could decide to write to the EQC Board now, to ask it to fully consider the Crown risk appetite when placing its reinsurance programme. To impact the Board's consideration of the 2020/21 programme, the letter would need to be sent this week as the EQC Board is meeting on Friday 17 April to finalise the reinsurance programme.
7. A draft letter to the EQC Board Chair is attached should you wish to pursue this option.

Recommended Action

We recommend that you:

- a **note** that due to the escalation of fiscal pressures driven by the response to Covid-19, Treasury is requesting that you review the Crown's risk tolerance for EQC's contingent liability

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- b **note** that, with the reduction in interest rates, the economic value of reinsurance is likely to be more expensive but this benefit should be evaluated relative to the ability to fund any impact should an earthquake risk eventuate
- c **note** that three options for EQC's reinsurance programme have been investigated for additional layers to reduce the deductible from \$1.75 billion to \$1 billion
- d **note** that the additional purchase of the reinsurance programme would negatively impact the pace of rebuilding the Natural Disaster Fund up to s9(2)(i)
- e **note** that Treasury has a soft preference to maintain the status quo for the 2020/21 reinsurance programme, but would like to investigate further with EQC options for future years in the medium term
- f **note** that Treasury considers that a focus on economic resilience due to changing economic conditions and the likelihood of tighter fiscal headroom is an appropriate judgement when expressing risk appetite
- g **agree** to sign the letter to EQC Board Chair to express a reduced risk appetite and asking that the Board consider Treasury's views on the options presented for how the 2020/21 reinsurance programme could be adapted
- Agree/disagree.*
- h should you agree to recommendation (g) **indicate** to officials whether you would like any of the options in paragraph 16 to be considered when engaging with the EQC Board

Agree/disagree.

Joseph Sant
Manager, Financial Institutions

Hon Grant Robertson
Minister of Finance

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Progress on the 2020/21 Reinsurance Programme

8. The timing of this briefing is to enable EQC to act ahead of placing its 2020/21 reinsurance programme. However, timing is tight, with negotiations in an advanced state - contracts are due to be signed 1 May 2020. Options presented are expected to be actionable, should you agree to send a letter in the week of 13 April 2020.
9. The estimated Probably Maximum loss exposure for EQC is ~\$8 billion.¹ The established reinsurance programme has secured \$6 billion of reinsurance, where the Crown is exposed to the first \$1.75 billion of any claims and any amount over \$7.75 billion, for a significant event.

Crown Risk Tolerance and Management of Contingent Liabilities

10. The Treasury works with EQC on the Crown's risk tolerance. The signal for whether to retain or transfer risk is based on an economic calculation of cost-effectiveness.² This purely economic calculation would likely indicate that reinsurance is relatively more expensive in the current interest rate environment.
11. However, there is a subjective consideration to determining the Crown risk appetite, namely the scarcity of Crown capital. The Crown balance sheet will be weaker over the medium term due to the required response to Covid-19. There is also a high level of uncertainty with the future outlook. These factors prompt a question on the management of risks, where possible to do so.
12. The Treasury will be providing advice on the fiscal policy response including fiscal headroom in the coming weeks.
13. The \$1.75 billion bottom end Crown exposure was previously considered optimal because the cost of debt is more efficient than transferring to reinsurance. However, due to the current economic and fiscal challenges, prioritising the immediate financial health of the Crown balance sheet, including cash flow implications, creates a subjective view on whether there are other benefits to transferring this risk.
14. In order to understand the cost implications of transferring risk, we have engaged EQC to consider options of dropping the reinsurance deductible from \$1.75 billion to \$1 billion.

Options Analysis

15. Aon, as EQC's broker, has investigated the options available to EQC over the short to medium term, to reduce its reinsurance retention from \$1.75 billion to \$1 billion.
16. Three options for reducing EQC's existing deductible are:
 - option 1 – purchasing an additional excess of loss layer of \$750m with \$1 billion deductible

1 Modelled on a central Wellington earthquake. s9(2)(i)

2 The Crown's previously communicated risk tolerance for EQC is approximately \$5.5 billion, and the pre-existing Crown cost of capital for EQC is [T2019/3767 refers]. We are unable to recalculate the Crown risk tolerance and Crown cost of capital due to the fact that the true impacts of Covid-19 are not fully revealed, meaning the statistics cannot be finalised. With lower interest rates, the economic value of reinsurance is likely to be more expensive but this benefit should be reflected against the Crown's risk tolerance – the ability to fund any impact should an earthquake occur.

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- option 2 – purchasing additional second and third event cover with an excess of \$1 billion, and
 - option 3 – purchasing a multi-year aggregate of \$500m with \$1 billion deductible, with an additional excess of loss layer of \$250m.
17. Option 2, as a second or third layer of cover, would be unlikely to reduce the Crown's potential liabilities arising from an initial first event. We do not see this as a viable option given the intention is to reduce the Crown's contingent liabilities in the short to medium term.
18. Option 1 and 3 are both set up effectively to reduce the Crown's potential exposure to \$1 billion. We consider that Option 3 outweighs Option 1, because it is a multi-year aggregate cover that protects the core reinsurance programme pricing flexibility and diversifies the large capacity providers on EQC's reinsurance panel. Diversification of providers would mitigate credit risk in what is a global economic shock. However, any placement at this bottom end of coverage comes at a substantial premium as it will be called on should there be an earthquake.
19. The fiscal implications of taking up one of these options are presented in the next section.
20. We note the following alternative approaches that you may wish to consider:
- The Board could consider reducing coverage at the top end of the reinsurance programme (lowest probability impact). The cost per insurance layer at the top end is significantly cheaper than at the bottom end, and this would retain a significant cost whilst exposing the Crown should a significant earthquake event occur.
 - Options 1 and 3 are scalable. EQC could still gain the diversity benefit by only picking up the multi-year aggregate of \$500m for option 3 or scale back the \$750m layer for option 1.
 - You could choose not to intervene for the forthcoming reinsurance period but can retain the option to communicate risk preferences for future years. (Treasury preference)
 - This acknowledges that the risk of an earthquake exists, but the Crown can respond to the EQC liability – and the non-residential market impact – should such an event occur.
 - This allows for better understanding of the impacts of Covid-19 on fiscal position and reinsurance markets.
 - Risk appetite can be communicated more fully in the annual letter of expectations to the EQC Board later in the year.

Financial Implications

21. EQC currently expects to utilise \$203m of its \$503m annual revenue on placing its reinsurance programme. Increasing this programme would require additional funding.

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This would be through increasing levy income or offsetting spare capital EQC would otherwise expect to contribute to rebuilding the NDF.

22. Managing the EQC risk financing programme within existing levies is appropriate. A decision to lower the EQC deductible is expected to be for the medium term only, with the reinsurance programme reverting back to an economic calculation once certainty over the Crown's fiscal position is gained. We also note that heightened financial pressure on households is undesirable.
23. The additional expenditure for the reinsurance programme would have an impact on OBEGAL but would not impact net debt unless EQC is required to access the section 16 guarantee.
24. EQC is expecting to access the section 16 guarantee in 2020/21 for insurer finalisation payments only, indicating that the additional purchase of the reinsurance programme would likely have no impact on the Crown's net debt. However, there is a cash flow uncertainty whether the extra cost will be also called on from the guarantee. As this is not a loan facility, this timing element does generate a risk that net debt would be impacted.
25. EQC's forecast surplus, as shown in the following table, is taken from the Budget Economic and Fiscal Update submission agreed by the Board at its March 2020 meeting.³ The Board has not agreed to any change to the reinsurance budget. The fiscal impacts are indicative based on Aon's calculations and may vary.

\$m	2020/21	2021/22	2022/23
BEFU forecast surplus	s9(2)(i)		
Option 1 (additional layer)			
Revised surplus			
BEFU forecast surplus			
Option 2 (2 nd /3 rd loss)			
Revised surplus			
BEFU forecast surplus			
Option 3 (\$500m multi-year aggregate + additional layer)			
Revised surplus			

26. We are unable to show the impact on the NDF rebuild as there has not been sufficient time to request the actuarial analysis. Option 3 would see a cost of s9(2)(i) that would alternatively be applied to insurer finalisation (timing risks aside) and/or the rebuild of the NDF. The returns on any NDF assets would likely be very low in the early stages of the fund as it would be required to hold highly liquid assets (government bonds) at the outset.
27. Therefore, the judgement is whether the Board should allocate up to s9(2)(i) expected for at least three years, to remove \$750m of contingent liability from the

3 The pricing estimates included in the Aon are based on previous work undertaken both as part of the 2019/20 renewal and previous placements such as the 2016-19 aggregate layer with Berkshire Hathaway. These are intended as indicative only and would require further testing should a decision be made to proceed.

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Crown balance sheet (equivalent to a one in nine year event for this lower impact pay out).

28. While this is possible, particularly given the Crown's current debt programme in light of its response to COVID-19, further analysis of the reinsurance markets, the economic response and insurer finalisation over the 2020/21 period would enable a fuller analysis of options to be taken and medium term additional coverage provided if deemed necessary.

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Appendix One – Draft Letter to the EQC Board Chair (If Required)

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Hon Grant Robertson

MP for Wellington Central

Minister of Finance

Minister for Sport and Recreation

Minister Responsible for the Earthquake Commission

Associate Minister for Arts, Culture and Heritage



Sir Michael Cullen
Board Chair
Earthquake Commission
PO BOX 311
Wellington 6140

Dear Sir Michael,

In light of the current economic climate, and fiscal pressures faced by the Crown, it is important to strengthen the financial resilience of the Crown's balance sheet. The risk financing strategy of EQC plays an important role in supporting the Crown's balance sheet resilience, including how risk is retained or transferred.

As you are aware, we are responding to a significant economic shock. While the true impacts of COVID-19 are not fully known I expect there to be sufficient reason to be prudent on risks that the Crown is able to manage. Therefore I am writing to inform you that the Crown wishes that its exposure to the Crown guarantee in the Earthquake Commission Act 1993 section 16 be managed prudently.

To aid your planning, I expect this expression of a lower risk tolerance to exist in the medium term, for up to three years. The Treasury has already engaged with your management team and I encourage that you work collaboratively with the Treasury at this time.

I understand that timing is tight with the 2020/21 reinsurance programme, please don't hesitate to reach out should you have any question about this letter.

Yours sincerely

Hon Grant Robertson
Minister of Finance

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Reference: T2020/1406

SH-11-5-3 (Water)

Date: 8 May 2020

To: Minister of Finance (Hon Grant Robertson)
 Associate Minister of Finance (Hon David Parker)
 Associate Minister of Finance (Hon Shane Jones)
 Associate Minister of Finance (Hon James Shaw)

Deadline: 10.30am 11 May 2020

Aide Memoire: Cabinet paper: Investing in water infrastructure to accelerate reform and support economic recovery post COVID-19

We understand that the Minister of Local Government intends to lodge the Cabinet paper *Investing in water infrastructure to accelerate reform and support economic recovery post COVID-19* for consideration directly by Cabinet on 11 May 2020 (though there is a possibility the item is lodged for DEV on 13 May).

The paper seeks agreement to a reform approach to three waters infrastructure, s9(2)(f)(iv) to achieve the dual objectives of providing an infrastructure stimulus, and achieving reform of three waters service delivery.

We agree with the reform objectives to address issues in three waters

The paper proposes shifting to a multi-regional/regional delivery model for three waters. This is in response to systemic issues including significant under-investment in infrastructure, capacity and capability issues, and funding and affordability issues.

The Treasury supports engaging local government in a dialogue about three waters service delivery reform.

COVID-19 might adversely affect local authority investment in infrastructure

The Cabinet paper argues that the COVID-19 shock compounds the three waters issues faced by local government. This is because of the prioritisation decisions that many local authorities will be considering to cushion the blow to ratepayers and manage debt/revenue ratios. Three waters projects may be one of the first areas of spending that will be cut, which would compound pre-existing under-investment. However, we do not yet know the extent to which this will occur.

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We are also unsure of the stimulus value of the proposed investment, given the uncertainty around local authority decisions on water infrastructure.

Paper presents an opportunity for instigating stronger reform commitment

In January 2020, Cabinet agreed to support local government to make voluntary changes to service delivery arrangements, and set a one-year deadline for demonstrating progress [CBC-20-MIN-0006 refers].

The paper presents the issues facing local authorities as a result of COVID-19 as an opportunity to address the systemic issues in the three waters sector, and instigate sectoral reform in a way that will support a productive and sustainable economy.

The paper proposes that funding from the Crown could offset local authorities' revenue reductions, support continued investment in three waters infrastructure, and be used as leverage to garner support for sectoral reform.

The Treasury is also supportive of the concept that any funding provided by the Crown to assist local government should be conditional on participation in reform.

We do not support agreeing a funding envelope and delegations without a clear negotiation mandate

The paper seeks a funding envelope of s9(2)(f)(iv) for the three waters reform, with s9(2)(f)(iv) of this available for an 'early injection' to maintain planned investment and asset quality in the face of significant declines in council revenue. These figures appear to be relatively arbitrary, and have not been developed based on engagement with local authorities' needs. We also note that we are expecting three waters infrastructure proposals to be included as part of the list of 'shovel ready' projects identified by Crown Infrastructure Partners.

The paper also seeks delegated authority for you and the Minister of Local Government, (joint Ministers) to draw down the s9(2)(f)(iv) with the parameters under which this delegation can be exercised to be determined at a later date by joint Ministers.

We understand that the purpose of these decisions is to 'provide a financial mandate for engaging with local authorities'. **We do not agree with this approach for a number of reasons:**

1. Any provision of funding to address council revenue shortfalls needs to be considered within the wider package of Crown COVID-19 funding, and any funding for infrastructure should be drawn from the \$3 billion tagged contingency for infrastructure being established from the CRRF.
2. There are no clear parameters, process or mechanism for determining what the funding will buy, or how it will be connected to sectoral reform. This risks

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becoming a Crown handout without achieving the overarching goal of sectoral reform.

3. If the funding envelope is agreed and known by the sector, any negotiations with the sector are likely to negotiate upwards towards this amount. This does not present a strong case for prudent use of taxpayer funds.

We strongly consider that the paper's objective of entering into a dialogue with local government could be achieved by Ministers agreeing a high-level purpose for negotiating and signalling that the Crown is prepared to invest. This would enable Ministers to test the extent of funding required to achieve the objectives.

Ministers could then seek Cabinet agreement to clear parameters for a formal negotiating mandate, including a fiscal envelope within the infrastructure tagged contingency, and associated draw-down terms (including enforcement mechanism), to achieve the outlined sectoral reform.

Future funding rounds of the CRRF could increase the infrastructure tagged contingency, if required.

Bottom lines are required to support local government negotiations

At present, the paper does not set clear parameters for delegated Ministers to negotiate a position with local government, including what success looks like. As you are aware, in the Greater Christchurch Regeneration portfolio, clear negotiating parameters were agreed by Cabinet before the Global Settlement negotiations commenced and a funding envelope was agreed [DEV-18-MIN-0285 refers].

We strongly recommend that before negotiations are entered into, Ministers are clear on bottom lines such as:

1. How many councils or regions need to sign up to proceed with the reform (e.g. what if only some authorities sign up, or only three out of five regions)?
2. What mechanism will be used for councils to agree to the reform (e.g. how will commitment of funding not only ensure outcomes are delivered, but provide confidence to Ministers that local authorities will commit to reform)?
3. What will the government do if some councils do not agree to participate in reform?
4. How will any early injection funding be provided to Councils, and how will it be linked to the delivery of three waters projects (e.g. how will payments be linked to projects and milestones)?

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Treasury's proposal: Stagger decisions – agree reform now, agree negotiation mandate in July 2020

As mentioned, at a high level, we agree with the intention of the paper to proceed with sectoral reform of three waters infrastructure. Recommendations 5 through 10 in the current paper would provide for Cabinet agreement to sectoral reform.

However, we think that Cabinet and Ministers would need more information to be confident that local authority engagement will deliver the outcomes sought. This is a very complex decision, with many intersecting considerations, and we consider that seeking all decisions upfront with unclear parameters and next steps is premature.

We therefore consider that the paper should focus on seeking Cabinet agreement to engage with the local authorities on the proposed three waters reform, and potentially signal that the Crown is prepared to commit funding to support this outcome. We consider that this would represent a strong enough commitment for the Minister of Local Government to begin a dialogue with local authorities. Once that dialogue has begun, we consider that further Cabinet decisions could be sought on the negotiating parameters and the fiscal envelope for negotiations.

Alternate recommendations for the Minister of Local Government's paper, giving effect to our recommended approach, are attached as Annex One, should you wish to table them.

Morgan Dryburgh, Senior Analyst, National Infrastructure Unit (NIU), N/A
David Taylor, Manager, National Infrastructure Unit (NIU), s9(2)(k)

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Annex One: Alternate recommendations


Recommendations 1 through 17 could remain. Note that recommendations 5 through 10 provide the Cabinet agreement to a three waters reform approach, and enable the Minister of Local Government to engage with the sector.

Replace recommendations 18 through 35 with the below:

Engagement with the local government sector

18. **agree** to set a deadline of 14 August 2020 for the sector to sign up to the proposed approach, subject to the Minister of Local Government first reporting back to Cabinet as per recommendation 19 below;
19. **invite** the Minister of Local Government to report back to Cabinet in July 2020 and seek agreement to the negotiating strategy, negotiating parameters, and fiscal envelope being developed by the Minister of Local Government and other Three Waters Ministers, to deal with situations in which individual councils do not support the reform process;
20. **note** that there will be continued engagement with local government, including discussions with sector representative bodies, and direct engagement with councils, and an engagement strategy will be developed to guide this work;
21. **agree** that the Minister of Local Government can signal to the sector that the Crown is prepared to provide funding towards three waters infrastructure subject to commitment to three waters reform, but the exact level of funding will be determined as a result of initial sectoral engagement and further analysis;

Financial implications

22. **note** that it will take significant resources to administer and implement the complex service delivery reform and investment programme described above, incentivise and enable the local government sector to support the reforms, address infrastructure deficits, and provide an appropriate economic stimulus;
23. s9(2)(f)(iv) 
24. **note** that the Minister of Local Government intends to return to Cabinet in July 2020 to confirm the fiscal envelope required for the reform programme, as well as the negotiating parameters,
25. **agree** that and that any funding required would be charged against the infrastructure tagged contingency established from the COVID-19 Response and Recovery Fund;

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26. **note** that it is intended that a delegated authority to draw down the three waters reform funding will be sought for the Minister of Finance, the Minister of Local Government, and the Minister for Infrastructure following Cabinet approval of the negotiating parameters and fiscal envelope.

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JOINT BRIEFING

Preserving the Nation's Memory: Archives Wellington finance lease


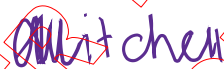
Date:	15 May 2020	Priority:	High
Security classification:	In Confidence	Ministerial Database Number:	IA202000437
		Treasury report number:	T2020/1504

Action sought		
	Action sought	Deadlines
Hon. Grant Robertson Minister of Finance	Agree that the entry into the proposed Deed of Lease on the terms described in this report is necessary or expedient in the public interest for the purposes of section 47 of the Public Finance Act.	18 May 2020
Hon. Tracey Martin Minister of Internal Affairs	Note the contents of this briefing.	18 May 2020

Contact for telephone discussion (if required)				
Name	Position	Direct line	After hours	1st contact
Peter Murray	Deputy Chief Executive, Information and Knowledge Services, DIA	s9(2)(k)	s9(2)(g)(ii)	✓
Sharyn Mitchell	Chief Financial Officer, Organisational Capability and Services, DIA			
Michael Lonergan	Analyst, Justice, Security and Government Services, The Treasury		N/A	✓

Simon Duncan	Team Leader, Justice, Security and Government Services, The Treasury	s9(2)(k)	s9(2)(g)(ii)	
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Approved for release by:

Simon Duncan, Team Leader, Justice, Security and Government Services, The Treasury	
Sharyn Mitchell, Chief Financial Officer, Department of Internal Affairs	

Return to:	Epi Lima, Level 6 45 Pipitea Street
Cohesion reference:	Joint briefing Finance Lease 15 May 2020 - Final.docx

Minister's office to complete:

☐ Approved

☐ Declined

☐ Noted

☐ Needs change

☐ Seen

☐ Overtaken by Events

☐ See Minister's Notes

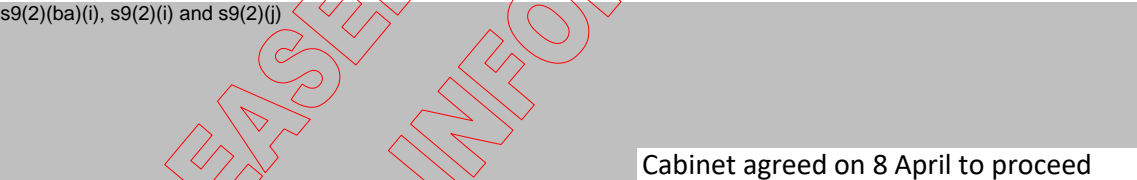


☐ Withdrawn

Comments

Proposal

1. This briefing seeks your agreement that the finance lease for the new Archives Wellington Lease facility is necessary or expedient in the public interest in accordance with section 47 of the Public Finance Act 1989. Your approval is sought by 18 May 2020 to enable the public announcement of the Budget 2020 funding for the Preserving the Nation's Memory Programme by the Minister of Internal Affairs.

Executive Summary

2. The Preserving the Nation's Memory (**PtNM**) Programme seeks to upgrade and expand the physical infrastructure and storage capacity of Archives New Zealand (**Archives**), the National Library of New Zealand (**National Library**), and Ngā Taonga Sound and Vision (**Ngā Taonga**). A key project is the development of a new purpose-built Archives Wellington Lease (**AWL**) facility at 2-12 Aitken Street, Thorndon, on land owned by PSPIB/CPPIB Waiheke Inc.
3. In August 2019 the Department of Internal Affairs (the **Department**) entered into a development agreement with the developer for the PtNM, pending further negotiations and approvals. Due to the long term and specialist nature of the commercial lease for the AWL, accounting standards require the lease to be treated as a finance lease. A finance lease is a form of borrowing and the Public Finance Act 1989 (the **Act**) requires borrowing by the Crown to be approved by the Minister of Finance.
4. s9(2)(ba)(i), s9(2)(i) and s9(2)(j)

Cabinet agreed on 8 April to proceed with the investment [CBC-20-MIN-0025]. Funding to implement PtNM was agreed through Budget 2020 [CAB-20-MIN-0155.19]. The final necessary approval relates to the finance lease for the AWL which forms part of the Deed of Lease.
5. While the majority of the terms of the Deed of Lease have been agreed, some matters are not yet confirmed. These matters will be finalised once the AWL construction is near completion and the lease can be finalised, expected to be in late-2024. s9(2)(h)

6. In order to allow the AWL investment to proceed, the Department has requested that you assess whether entry into the Deed of Lease on the terms described in this report would be necessary or expedient in the public interest. s9(2)(h)
s9(2)(ba)(i)

7. We consider that, in the circumstances, it is in the public interest to enter into the Deed of Lease. Once the Deed of Lease is finalised in 2024, the Department will seek final approval from the Minister of Finance to enter into the finance lease.

Recommendations

We recommend that you:

- a) **note** that under the terms of the Development Agreement, the Department is unable to proceed with the Archives Wellington development beyond 31 May 2020 without confirmation that all necessary Government approvals are in place (to the extent possible) in connection with, among other things, the Crown's entry into the Deed of Lease for the Archives Wellington facility once the lease terms are finalised;
- b) **note** that while majority of the terms of the Deed of Lease have been agreed, some matters are not yet confirmed and that these matters will only be finalised once the new Archives Wellington Lease facility construction is near completion (currently expected to be late-2024);
- c) **note** that the Deed of Lease is a finance lease and, as such, is "borrowing" for the purposes of the Public Finance Act 1989;
- d) **note** that Section 47 of that Act empowers the Minister of Finance to borrow money on behalf of the Crown if it appears to the Minister to be necessary or expedient in the public interest to do so;
- e) **agree** that in your view, the borrowing of money captured in the Deed of Lease and any ancillary documents on the terms described in this report s9(2)(ba)(i), s9(2)(i) and s9(2)(j) is necessary or expedient in the public interest (in accordance with section 47(1) of the Act); and

Yes / No

f)

s9(2)(h)

Hon Grant Robertson
Minister of Finance

Background

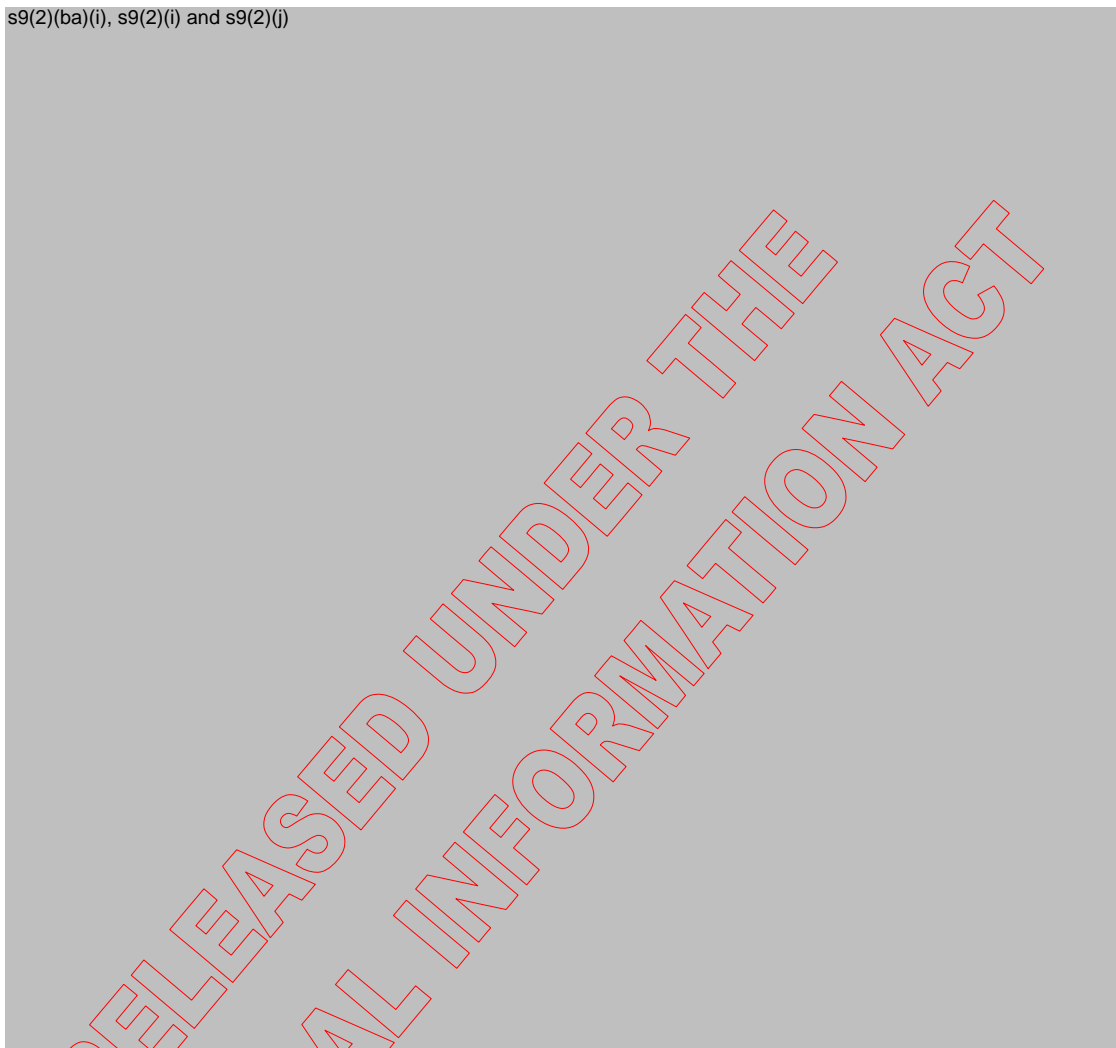
8. On 8 April 2020 the Cabinet Business Committee agreed to support the investment in the PtNM Programme [CBC-20-MIN-0025 refers], which seeks to upgrade and expand the physical infrastructure and storage capacity of Archives, the National Library and Ngā Taonga. This support for the investment was subject to approval of the necessary finance lease by the Minister of Finance.
9. The investment will address urgent capacity issues and the aging property portfolio. The PtNM Business Case has identified a preferred option which includes:
 - a. a new purpose-built AWL facility and associated alterations to the National Library;
 - b. a new Regional Shared Repository; and
 - c. the rationalisation of the current property portfolio.
10. On 6 April 2020 Cabinet agreed to support a 'phased funding' approach for the PtNM Programme investment initiative through Budget 2020. It agreed to funding of \$46.553 million total operating over the forecast period and \$121.029 million capital over the 4-year forecast period, in the form of tagged contingencies [CAB-20-MIN-0155.19 refers], for:
 - a. the AWL construction and ongoing lease commitment;
 - b. the RSR land purchase and design; and
 - c. the design and procurement process for the National Library alterations.

Finance lease for the AWL facility

11. The AWL facility is a joint development between the Department and AMP Capital Investors, fund managers for the private landowner PSPIB/CPPIB Waiheke Inc. for a new purpose-built facility at the property with physical connectivity via an air-bridge with the National Library's Molesworth Street facility.
12. A Development Agreement for an integrated design, build, fitout and long-term commercial lease was agreed and signed by both parties in July 2019. An archives facility, unlike an office building, requires an integrated purpose-build approach to ensure it will meet the required operational requirements. The Development Agreement attaches the form of the Deed of Lease that must be signed for completion of the deal.
13. The long-term nature of the proposed Deed of Lease, plus the fact that it will be a highly specialised facility, means that the commercial lease will be classified as a finance lease under Public Benefits Entities Accounting Standards (referred as PBE IPSAS) and recognised in the Departments' financial statements in accordance with PBE IPSAS 13 Leases.
14. A finance lease is a form of borrowing money under section 2 of the Act. The Minister of Finance is empowered to enter into the Deed of Lease on behalf of the Crown under section 47 of the Act, if it appears to the Minister to be necessary or expedient in the public interest to do so.

Commercial Lease Arrangement

15. s9(2)(ba)(i), s9(2)(i) and s9(2)(j)



16. While the majority of the terms of the Deed of Lease have been agreed, some matters are not yet confirmed. s9(2)(ba)(i), s9(2)(i) and s9(2)(j)




These matters will be finalised once the AWL construction is near completion and the lease can be finalised. This is expected to be in late-2024.

17. s9(2)(ba)(i), s9(2)(i) and s9(2)(j)


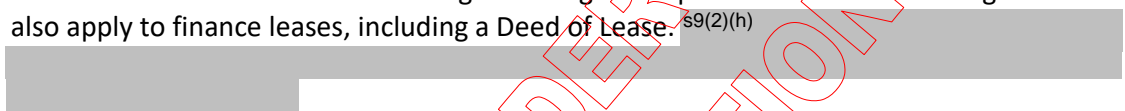



18. s9(2)(ba)(i), s9(2)(i) and s9(2)(j)



19. s9(2)(ba)(i), s9(2)(i) and s9(2)(j)
- 

The Minister of Finance's power to borrow under a finance lease¹

20. As set out in the Treasury Instructions, Departments must obtain approval before entering into any finance lease. s9(2)(h)
- 
21. A finance lease is a form of borrowing and the general prohibitions on borrowing in the Act also apply to finance leases, including a Deed of Lease. s9(2)(h)
- 
22. Section 47 of the Act empowers the Minister of Finance to borrow money on behalf of the Crown if it appears to the Minister to be necessary or expedient in the public interest.
23. s9(2)(h)
- 

Is borrowing by entering into the Deed of Lease 'necessary or expedient in the public interest'?

24. It is a matter for you to decide whether you are satisfied that it is necessary or expedient in the public interest to borrow money by entering into the Deed of Lease.
25. We set out below factors that we consider are relevant to that assessment. However, you may decide to ignore these factors, or take into account other factors you consider relevant, and you may give such weight to the factors referred to below as you deem fit. You should make an independent decision and are not bound to accept the assessment below.
26. We consider that in the circumstances, entering into the Deed of Lease satisfies the "public interest test" in section 47 of the Act.

¹ This section is subject to legal professional privilege.

In the public interest


27. s9(2)(h)
28. A lease arrangement for a new purpose-built Archives facility adjacent to the National Library will provide a once-in-a-life-time opportunity to create a national documentary heritage precinct within the Thorndon area, with Parliament and most government agencies nearby. It also presents an opportunity for shared services and co-location of the three institutions: Archives, the National Library and Ngā Taonga.
29. Generally speaking, investment in facilities of this nature is justified because safe storage of heritage collections provides significant value to the public. More specifically, the new AWL facility will deliver public benefits through:
- a. Improved access by the general public, for the shared use of New Zealand's documentary heritage and record of government;
 - b. Increased confidence in our constitutional infrastructure, and increased and stronger sense of national identity;
 - c. Reduced risk of loss or damage to the holdings and collections;
 - d. Collection care and management through shared public facilities, shared specialist conservation and digitisation facilities; and
 - e. Increased opportunities for collaboration within the heritage sector through the creation of a co-located campus for the wider culture and heritage system.
30. In addition, the PtNM Programme is a significant infrastructure programme. The development of a new purpose-built AWL facility may support New Zealand's economic recovery from the impact of the COVID-19 pandemic. Construction projects such as the AWL will help support the construction industry and provide employment opportunities.
31. The AWL will be purpose built for the Crown. s9(2)(ba)(i)

Given the Deed of Lease enables the delivery of the benefits above, we consider that the finance lease documented in the Deed of Lease can be described as delivering outcomes in the public interest.

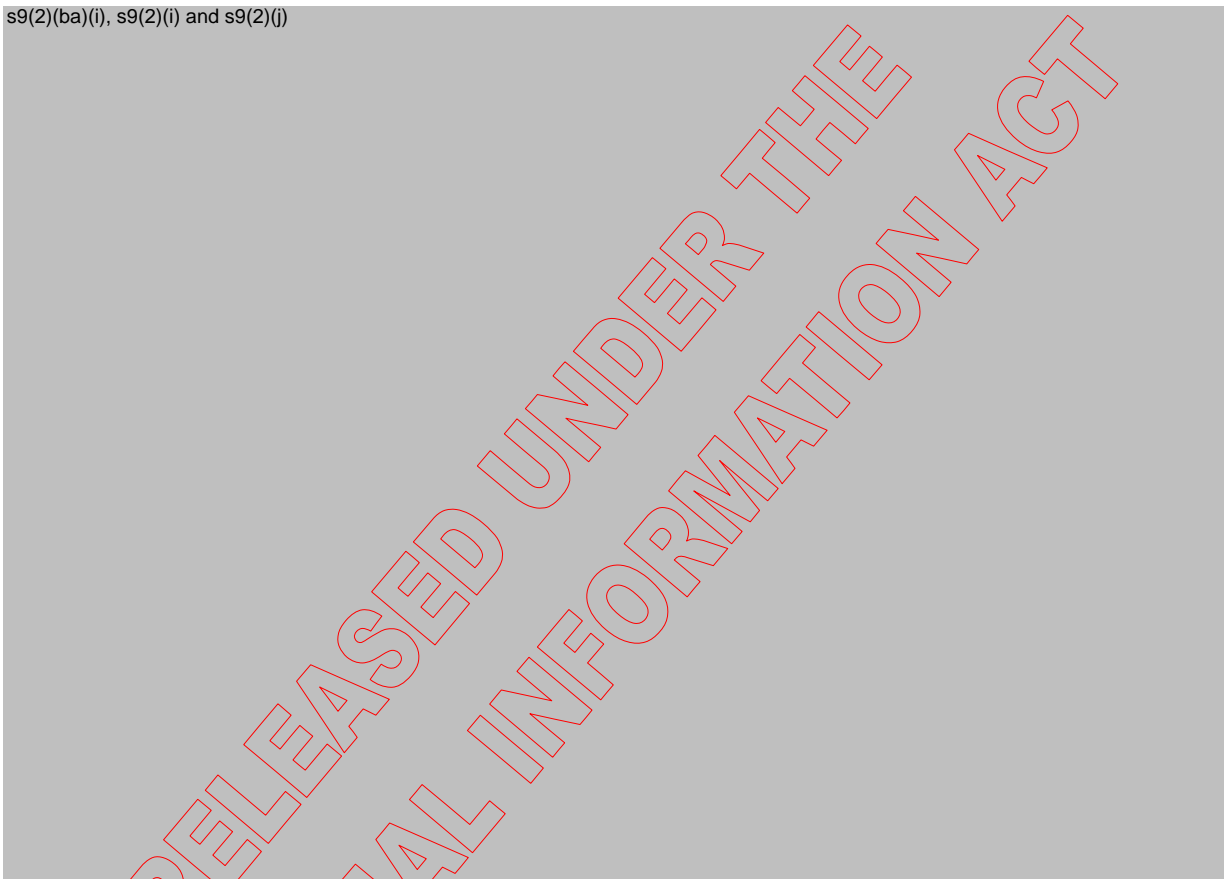
Necessary or expedient

32. The Deed of Lease is a condition for completion of the AWL facility as well as the Crown's use of the premises after completion. If the Crown does not enter into the Deed of Lease this will mean the AWL will not be delivered and this will have a significant negative impact the PtNM Programme as a whole.
33. s9(2)(ba)(i), s9(2)(i) and s9(2)(j)

34. s9(2)(ba)(i), s9(2)(i) and s9(2)(j)



s9(2)(ba)(i), s9(2)(i) and s9(2)(j)



Benefits

38. The main benefits of entering into the finance lease are as listed at paragraph 29 above, namely that it will enable the completion of the AWL development project which will deliver positive outcomes in the public interest.
39. The lease arrangement also transfers any construction risk during the development phase of the AWL to the Landlord, instead of being carried by the Crown.
40. Further benefits derived from this lease arrangement include:
 - a. a significantly reduced construction timeframe;
 - b. an efficient process to decant the holdings from the Mulgrave Street facility to the new AWL facility, reducing the exposure to risk of damage or loss of the holdings during this process;
 - c. avoids expensive maintenance costs on the Mulgrave Street facility; and
 - d. a significant uplift in building performance and asset utilisation.

No viable alternatives to finance lease

41. The PtNM Programme has undertaken four years of planning and analysis, including a number of specialist and technical evaluations to better understand the geotechnical and seismic aspects of the redevelopment work that was proposed for the Archives Wellington Mulgrave Street facility. This expertise and analysis established that a redevelopment of the Mulgrave Street facility would fail to meet the required building performance levels and seismic resilience without a complete rebuild.
42. The Kaikōura earthquakes presented an opportunity to look at several vacant sites within the Thorndon area which had become available for development. The Department invited Registrations of Interest and a Request for Proposal process resulted in the preferred site owned by the Landlord.
43. s9(2)(ba)(i), s9(2)(i) and s9(2)(j)

Assessment of risks and benefits against the public interest threshold

44. In light of the above, officials consider that:
- there is a public interest in entering into a finance lease on the terms set out in the Deed of Lease (and thereby “borrowing” for the purposes of section 47 of the Act);
 - the benefits of the proposed borrowing appear to outweigh the risks when mitigations are considered; and
 - there are no viable alternatives to a finance lease when it comes to the public benefit achieved as a result of the creation of a co-located campus increasing collaboration across the heritage sector.
45. Given this, we consider that entering into the finance lease on the terms outlined in the Deed of Lease (and ancillary documents) is necessary or expedient in the public interest.

Risks

46. s9(2)(ba)(i)
47. The payments due under the Deed of Lease will be funded from within Vote Internal Affairs.
s9(2)(ba)(i), s9(2)(i) and s9(2)(j)

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TE TAI ŌHANGA
THE TREASURY

Treasury Report: Correspondence from the Chairs of the Horizons and Greater Wellington Regional Councils

Date:	28 May 2020	Report No:	T2020/1133
		File Number:	SE-2-25-0 (General and Administration)

Action sought

	Action sought	Deadline
Minister for State Owned Enterprises (Rt Hon Winston Peters)	Agree the recommendations and sign and send the letter to the Chairs of the Horizons and Greater Wellington Regional Councils Note that the letter also provides a response to a further letter from the Greater Wellington Regional Council Chair to the Minister of Finance Refer a copy of this report and the response to the Minister of Transport	11 June 2020
Minister of Finance (Hon Grant Robertson)	Agree the recommendations Note that the letter also provides a response to a further letter from the Greater Wellington Regional Council Chair to the Minister of Finance	11 June 2020

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Ann Webster	Principal Advisor, Commercial Performance	s9(2)(k)	s9(2)(g)(ii) (mob) ✓
Juston Anderson	Acting Manager, Commercial Performance		N/A (mob)

Minister's Office actions (if required)

Minister for State Owned Enterprises' Office:

Once the signed report is received from the Minister of Finance's Office, and your Minister has signed the report and letter to the Chairs of the Horizons and Greater Wellington Regional Councils, **email** a signed copy of the letters to the chairs of Chairs of the Horizons and Greater Wellington Regional Councils
Refer a copy of this report and the response to the Minister of Transport
Return the signed report and letter to Treasury

Minister of Finance's Office:

Forward the signed report to the Minister for State Owned Enterprises' Office
Return the signed report to Treasury

Note any feedback on the quality of the report

Enclosures: Yes (attached)

[Draft letter to the Chairs of the Horizons and Greater Wellington Regional Councils \(4271374v2\)](#)

[9 April 2020 letter from Daran Ponter, Chair of the Greater Wellington Regional Council and Rachel Keedwell, Chair of the Horizons Regional Council \(4269027v1\)](#)

[5 May 2020 letter from Greg Miller, Group Chief Executive of KiwiRail \(4276380v1\)](#)

[8 May 2020 letter from Daran Ponter, Chair of the Greater Wellington Regional Council \(4284577v1\)](#)

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Treasury Report: Correspondence from the Chairs of the Horizons and Greater Wellington Regional Councils

Purpose of Report

1. This report provides a response for shareholding Ministers' consideration to a letter from the Chairs of the Horizons and Greater Wellington Regional Councils (GWRC) about its preferred location for the Wellington ferry terminal. It also responds to a further 8 May 2020 letter from GWRC Chair to the Minister of Finance.
2. KiwiRail Holdings Ltd (KiwiRail) and the Ministry of Transport (MOT) were consulted on this paper. KiwiRail has also provided a separate briefing to Ministers setting out its preferences for the future terminal location. MOT has also met with KiwiRail and StraitNZ about this matter.

Background

3. Shareholding Ministers received a letter from Daran Ponter, Chair of the Greater Wellington Regional Council and Rachel Keedwell, Chair of the Horizons Regional Council on 9 April 2020. The letter advises that the two Regional Councils met in early April and formally agreed Kaiwharawhara as their preferred site for a new multi-user ferry terminal in the Wellington Harbour (terminal).
4. A project group has been investigating options for a terminal site since 2018. This group involves the two Regional Councils, the New Zealand Transport Agency (NZTA), CentrePort Ltd, KiwiRail and Strait NZ (which operates the BlueBridge ferry service).
5. A further letter from the Chair of the GWRC to the Minister of Finance on 8 May 2020 provides information about the project group's option development and assessment process to date.
6. In September 2019, KiwiRail received a report from GNS Science identifying new seismic risks at the Kaiwharawhara site. Following this report, the project group has been struggling to reach agreement about the preferred terminal site. The site has implications for KiwiRail's intentions to replace its three aging Interislander ferries with two larger, rail-enabled ferries.
7. KiwiRail and CentrePort are lifeline utilities under the Civil Defence Emergency Management Act 2002 (CDEM Act) and are responsible for ensuring that they can function during and after an emergency.

Ferry terminal location preferences

KiwiRail's views

8. KiwiRail does not support the Kaiwharawhara location because it exposes a nationally strategic asset and large capital investment to seismic risk. KiwiRail's preference is that another available option, Kings Wharf, is pursued.
9. KiwiRail says the GNS Science report found that the Kaiwharawhara site is exposed to a risk of complex faulting in the event of a major earthquake on the Wellington Fault and that:

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- compared with the rupturing expected at other harbour sites of a 90 metre area around the fault, rupturing over a 200 – 300 metre area is more likely at Kaiwharawhara
 - the extent of the potential rupture area would make the design infrastructure foundation supports very difficult and would require significant additional engineering work and costs
 - even with additional work, a major earthquake could still leave the terminal inoperable and with the potential to result in loss of lives.
10. KiwiRail's briefing to you includes a letter to KiwiRail from Dr Kelvin Berryman of GNS Science. This letter advises that in addition to earthquake shaking on soft soil sites and tsunami risks (which all Wellington sites are exposed to), the Kaiwharawhara site is also at risk of fault rupture. Cost-effective engineering solutions are not possible at this site as the extent of reclamation and development make it unlikely that detailed fault displacement characteristics can be revealed.

Regional Councils' views

11. The letter from the Regional Council Chairs says that making the terminal a success will require significant funding and close cooperation from all parties. They see a terminal at Kaiwharawhara as bringing regional and national benefits, enabling efficiencies for ferry service operators and the port, and freeing up port land for alternative uses. While other options were considered, the letter says these would have a significant impact on the ability of the port to operate.
12. The GWRC Chair's 8 May 2020 letter further says the terminal decision is not standalone and has implications for Wellington's urban development plans and aspirations. It says alternatives to Kaiwharawhara present significant and costly impacts for CentrePort and central New Zealand's importers and exporters as the port is their most cost-effective route to market. It includes advice that the terminal option assessment was reviewed after the GNS Science report was received, with Kaiwharawhara remained the highest ranked option. s9(2)(g)(i)
13. MOT advises that GWRC has submitted on the draft NZ Rail Plan suggesting removal of any reference to considering moving from Kaiwharawhara to a more resilient site. MOT officials will consider this submission as part of providing advice to Rail Ministers on the final rail plan, but consider that choosing the final location of the terminal is outside of the scope of the rail plan.

KiwiRail's terminal plans in its ferry replacement budget bid

14. Through Budget 2020, KiwiRail is receiving \$400.1m for investment in ferries and associated landside infrastructure in Picton and Wellington. s9(2)(b)(ii)
- Other costs, such as the development of associated landside infrastructure owned by CentrePort is financed by the port and recovered through port fees charged to KiwiRail and any other operators using the terminal. The roading infrastructure involves funding from NZTA, which would need to be considered through the normal Land Transport Management Act processes and funded as appropriate from the National Land Transport Fund.
15. KiwiRail's Board is responsible for the management of the ferry replacement decisions including about the ferry procurement process and the location and development of the Picton and Wellington terminals.

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16. At the time KiwiRail received GNS Science's advice, it was finalising the detailed business case (DBC) and a Budget 2020 bid for its ferry replacement programme.
17. Both the DBC and budget bid note a high degree of uncertainty in the cost estimates for the terminal. Although an alternative site is preferred, the DBC assumes a ten year stay at Kaiwharawhara as an alternative option was unlikely to be agreed in the next few years.
18. In response to questions from MOT and Treasury in February 2020 about emergency management and resilience in the ferry replacement budget bid, KiwiRail advised that:
 - the terminal would be built to a standard suitable for a 10 year stay (to 2030)
 - an emergency response after a significant earthquake that damaged or destroyed the landside infrastructure would take 24 hours (assuming the stern ramp was fitted)
 - it was working to ensure that as many portside assets as possible were relocatable to prevent stranded assets.

Proposed response to the Chairs' letter

19. A draft response to the letters from the Chairs is attached for your consideration that:
 - urges the Councils to continue working through the project group to agree a permanent site as soon as possible as this group is best placed to make the terminal a success
 - advises that the best solution will take account of public safety, resilience, transport outcomes and value for money.

Risks

20. The main risks about the current progress with the work of the project group is that it fails to find a commonly agreed site for the terminal, leading to:
 - a failure to give proper consideration to civil defence and emergency management risks increasing the resilience risks of a key transport link for New Zealand as well as for Wellington in an emergency situation
 - increased costs or less than optimal outcomes from KiwiRail's ferry replacement programme and from transport funding.
21. Although both KiwiRail and the Regional Councils ask shareholding Ministers to intervene, central government involvement is likely to make these negotiations more difficult and costly. If a role for central government in facilitating agreement to a permanent location does become necessary, it is likely that a transport outcomes (including civil defence and network resilience) will be needed, rather than a KiwiRail shareholder perspective. The project group's discussions are commercial in confidence. However, should members agree to seek advice about the responsibilities of the lifeline utilities under the CDEM Act, they could seek to involve the National Emergency Management Agency and through it, MOT.
22. The Treasury and the MOT will maintain an active interest in KiwiRail's ferry replacement project to see that constructive progress is being made.

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Next Steps

23. If you agree, the signed response will be sent to Daran Ponter, Chair of the Greater Wellington Regional Council and Rachel Keedwell, Chair of the Horizons Regional Council.

Recommended Action

We recommend that you:

- a **agree** that the Minister for State Owned Enterprises sign and send the attached letter to Daran Ponter, Chair of the Greater Wellington Regional Council and Rachel Keedwell, Chair of the Horizons Regional Council

Agree/disagree.

Minister for State Owned Enterprises

Agree/disagree.

Minister of Finance

- b **note** that the letter also provides a response to the letter of 8 May 2020 from Daran Ponter, Chair of the Greater Wellington Regional Council to the Minister of Finance

- c **agree** that the Minister for State Owned Enterprises refer this report and the letter in response to the Minister of Transport

Agree/disagree.

Minister for State Owned Enterprises

Agree/disagree.

Minister of Finance

Juston Anderson
Acting Manager, Commercial Performance

Rt Hon Winston Peters
Minister for State Owned Enterprises

Hon Grant Robertson
Minister of Finance

Rt Hon Winston Peters

Deputy Prime Minister

Minister of Foreign Affairs

Minister for Disarmament and Arms Control

Minister for State Owned Enterprises

Minister for Racing



4 JUN 2020

Daran Ponter
Chair
Greater Wellington Regional Council
Daran.Ponter@gw.govt.nz

Rachel Keedwell (PHD)
Chair
Horizons Regional Council
rachel.keedwell@horizons.govt.nz

Dear Mr Ponter and Ms Keedwell

Wellington Ferry Terminal

Thank you for your letter of 6 April 2020, regarding the joint decision of the Horizons and Greater Wellington Regional Councils to support Kaiwharawhara as the site of a new multi-user ferry terminal. The following comments also respond to the further correspondence of 8 May 2020 from Mr Ponter to the Minister of Finance in his capacity as a shareholding Minister of KiwiRail.

The Government agrees a future terminal must be a success and that close cooperation and agreement from all parties involved is required.

Some parties, including KiwiRail, have questions about seismic issues at the Kaiwharawhara site. There will be high public expectations that the future terminal location best addresses public safety, resilience, transport outcomes, as well as being value for money. It is also critical the location enables KiwiRail and CentrePort, as lifeline utilities, to function as required by section 60 of the Civil Defence and Emergency Management Act 2020.

Shareholding Ministers are confident that the joint project group, established in 2018 to review terminal location options, involves the agencies best equipped to make the terminal a success and urge all members to focus on reaching agreement to a permanent site as soon as possible.

We look forward to receiving advice through KiwiRail about the work of the project group and wish you every success in your work toward a permanent site for the Wellington ferry terminal.

Yours sincerely



Hon Winston Peters
Minister for State Owned Enterprises
on behalf of shareholding Ministers

cc: Brian Corban, Chair, KiwiRail Limited, briancorban@corbanconsultants.co.nz
Greg Miller, CEO, KiwiRail Limited, Greg.Miller@kiwirail.co.nz

RELEASED UNDER THE
OFFICIAL INFORMATION ACT



By email

9 April 2020

File Ref: EXTR-9-888

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Rt Hon Winston Peters
Minister of State Owned Enterprises
Parliament Buildings
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Hon Grant Robertson
Minister of Finance
Parliament Buildings
Wellington

Tēnā kōrua Ministers

Wellington Ferry Terminal

As you will know Greater Wellington has over the past 18 months, been coordinating a project group investigating the options for a new multi-user ferry terminal in Wellington harbour. This group consisted of: GW, Wellington City Council, New Zealand Transport Agency, CentrePort, KiwiRail and Bluebridge, at officer, CE and Board/Council level.

The investigation of alternatives and the preparation of a business case has been undertaken on a collaborative basis and has been extensive and thorough. A large number of sites were evaluated and significant information has been gathered to support the assessment, including information on seismic performance, transport connections, fit with city and regional plans and operational performance for the ferry operators. The work of this group concluded in a preference for a site at Kaiwharawhara.

The two shareholding Councils in CentrePort, Greater Wellington and Horizons Regional Council, have since met in early April, to formally support the preferred site at Kaiwharawhara. Both Councils also noted that the other sites evaluated would have a significant impact on the ability of the Port to continue its business and were not supported.

We believe that a new multi-user terminal will bring significant benefits to the region and NZ. The ferry services are a critical part of the national transport network and the current facilities are well past their use-by date. A multi-user solution will enable efficiencies to be gained for the operators and the port and importantly free-up other parts of the port land for alternative uses that benefit the economy and the city.





CentrePort as the port operator, are ready to progress the planning of a new terminal through the next stages, including detailed design of a terminal and related marine facilities and will work with the ferry operators to develop a transition plan.

To make this new Wellington ferry terminal a success will require the close cooperation of all parties, including Government. Significant funding is likely to be required, both for the terminal/marine facilities and the related transport infrastructure to connect onto the State Highway. Both Greater Wellington and Horizons Regional Council are committed to delivering a successful outcome and will do whatever we can to ensure this can be achieved and look forward to working with the ferry operators on this exciting development.

We would welcome the opportunity to discuss this further with you and to working collaboratively towards a successful outcome for NZ.

Ngā mihi

A handwritten signature in blue ink, appearing to read "Daran Ponter".

Daran Ponter
Chair
Greater Wellington Regional Council
DD: 027 454 0689

A handwritten signature in blue ink, appearing to read "Rachel Keedwell".

Rachel Keedwell PhD
Chair
Horizons Regional Council
DD: 021 177 2790

cc: **Brian Corban**, Chair, KiwiRail
Greg Miller, CE, KiwiRail



5 May 2020

Rt Hon Winston Peters
Minister for State Owned Enterprises
Private Bag 18041
Parliament Buildings
WELLINGTON 6160

Hon Grant Robertson
Minister of Finance
Private Bag 18041
Parliament Buildings
WELLINGTON 6160

Dear Ministers

PREFERRED WELLINGTON FERRY TERMINAL LOCATION

I am pleased to report to you that the programme to replace our three ageing Cook Strait ferries is proceeding well and I would like to take this opportunity to reiterate KiwiRail's thanks to the Government for the financial support that is enabling this important procurement to proceed.

An integral part of the ferry replacement programme is the infrastructure to go with it, both in Picton and Wellington. Public consultation is underway in Picton and our plans are currently on schedule for designs to be finalised for the consenting process by June 2020.

However, we would like to raise with you our surprise and concern when we saw in the media last month that Greater Wellington Regional Council (GWRC) and Horizons Regional Council had announced Kaiwharawhara as the preferred site for a new multi-user ferry terminal in Wellington.

The terminal is a critical piece of New Zealand's transport infrastructure, essentially enabling the ferries to operate as extensions of State Highway 1 and the main trunk line for freight, passengers and their vehicles. On average, 825,000 passengers and tourists pass through the Interislander Wellington terminal annually and this is expected to grow significantly over the life of the assets (60+ years).

In light of the importance of the ferry terminal, seismic resilience is vital.

The Wellington Future Ports Forum (involving GWRC, Wellington City Council, NZTA, CentrePort, KiwiRail and StraitNZ) has been undertaking a business case process to identify the preferred Wellington terminal infrastructure location. Late last year, the forum was made aware of new GNS Science information that found a significantly increased seismic risk at the Kaiwharawhara site. KiwiRail provided engineering assessments for additional seismic strengthening work which would be required to improve safety, but which would considerably increase the cost of construction. We stressed that even with these works the terminal would still be inoperable after a major earthquake.

Choosing the most seismically risky site without resolving these issues seems to us at odds with public and governmental messaging about the need to build resilience into New Zealand's crucial infrastructure.

KiwiRail and StraitNZ, the only two operators of Cook Strait ferries, are united in considering that the alternative site of King's Wharf, which lies outside the Wellington Fault rupture zone, is preferable. It is the



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most resilient, the most central, and the most convenient for the public we serve, being effectively part of the existing transport hub which includes Wellington Railway Station and the Metlink bus depot.

GWRC and Horizon's pre-emptive announcement calls into question whether relative risks of the alternative sites have been adequately assessed and makes us concerned that local interests are being put ahead of investing in the most resilient Cook Strait transport connection for New Zealand and New Zealanders.

While we will endeavour to continue to engage with GWRC and the Wellington Future Ports Forum, we would welcome and appreciate an indication of support from you that these discussions should continue with the aim of the parties agreeing on the most resilient site. In the interests of resilience and future-proofing the vital Cook Strait connection, KiwiRail's view is that investment in the Wellington terminal should be put towards a King's Wharf site as the preferred priority.

I have attached a graphical summary of the two sites, outlining the reasons for our preference of the Kings Wharf site. I would welcome the opportunity of discussing this matter with you and outlining in further detail the issues at stake.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Greg Miller".

Greg Miller

Group Chief Executive

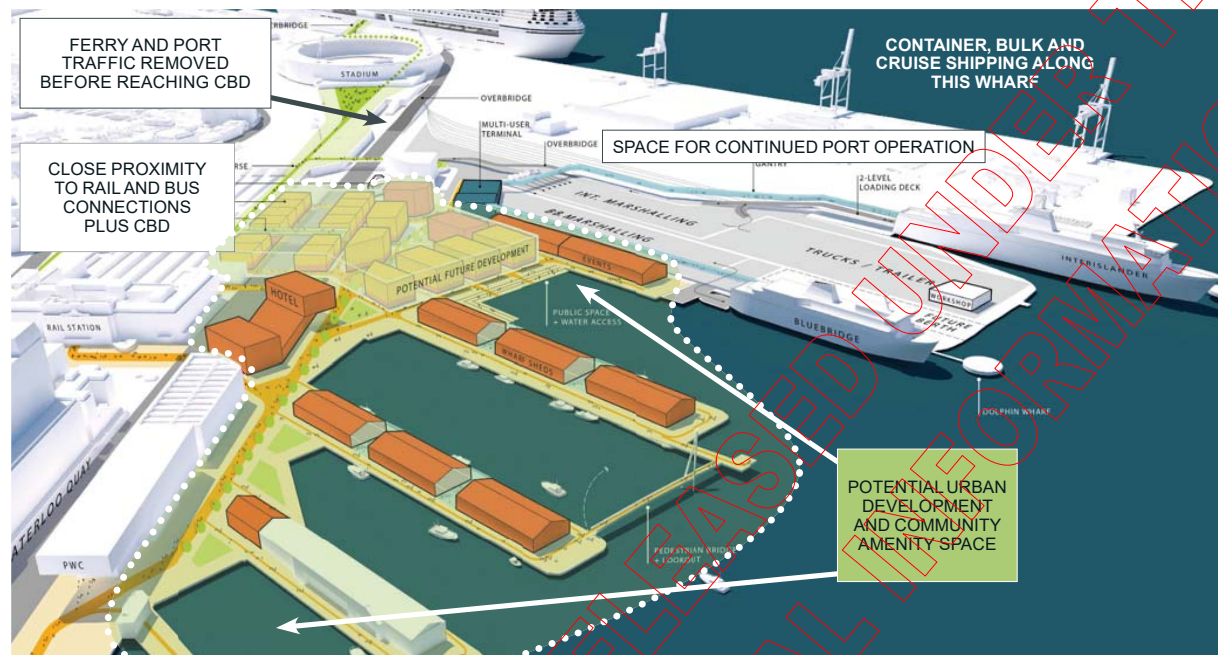
KiwiRail





Proposed Wellington Ferry Terminal - Kings Wharf

Preferred and more resilient site



1. KEY POINTS

- **Kings Wharf is a significantly more resilient site than Kaiwharawhara as there is no rupture zone**
- **As a result, it is KiwiRail's preferred site for a new ferry terminal**
- All aspirations can be achieved at this site: port activity, city urban development and a resilient Cook Strait transport connection
- Proximity to existing and proposed future transport infrastructure (pedestrian, rail, bus and Lets Get Wellington Moving initiatives)
- Ferry and port traffic removed from roading network prior to reaching Wellington CBD
- Proposed Kings Wharf option caters for both Interislander and BlueBridge plus port entrance requirements



- There will be less disruption to Cook Strait transport connections during construction at Kings Wharf compared to the Kaiwharawhara option
- Securing the necessary property access and consents is the next step for this option
- Project can be fast tracked to secure Cook Strait transport resilience for New Zealand

2. BENEFITS OF KINGS WHARF SITE

- Kings Wharf will work for both ferry operators – Interislander and StraitNZ - and provides better national resilience
- It is outside the Wellington Fault rupture zone or any known fault lines and so resilience can be achieved with more certainty and likely at a lower cost
- Expert advisors have determined that locating a ferry terminal at Kings Wharf provides opportunities for both urban development aspirations and transport connections
- Terminal infrastructure options closer to the Railway Station provides superior links to existing train and bus transport modes, as well as planned future modes such as light rail and providing cost savings
- Concerns about additional traffic being brought into the CBD can be addressed by having a port and terminal access point located nearer the stadium with 'waiting' roads within the terminal marshalling area. This would remove the risk of unacceptable congestion on Aotea Quay.
- The Kings Wharf option can be constructed to meet the arrival of the new Interislander ships plus secure Cook Strait transport resilience for New Zealand as soon as possible

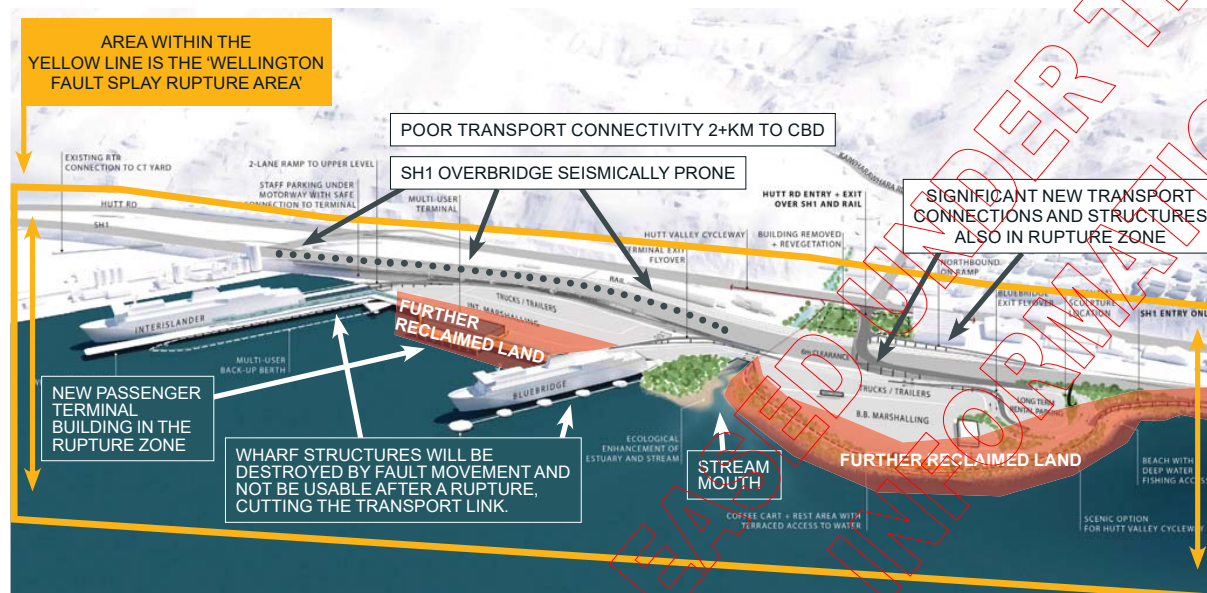
3. FERRY TERMINAL PROJECT AS POST-COVID STIMULUS

- KiwiRail and NZTA have separately identified in their post-COVID Stimulus packages that accelerating the build of the ferry terminal and the land transport connections makes sense to stimulate the economy and deliver aspects of the Lets Get Wellington Moving programme
- KiwiRail has submitted to the Ministry for the Environment that the ferry terminals in Wellington and Picton could be included in the fast track Order in Council framework
- We could take the opportunity to accelerate the project by using an Order in Council if parties can agree
- Subject to Crown feedback, KiwiRail will work with other stakeholders to secure the necessary property access and development pathway.



Proposed Wellington Ferry Terminal - Kaiwharawhara

Least preferred, least resilient site



1. KEY POINTS

- The ferry terminal infrastructure and transport connections at Kaiwharawhara would be destroyed, inaccessible and inoperable after a Wellington Fault rupture
- As a result, neither KiwiRail nor StraitNZ (BlueBridge) agree that it is the preferred site for a new ferry terminal
- The Cook Strait ferries provide a vital economic and social transport link for all of New Zealand
- The value of freight carried by the ferry companies each year across Cook Strait is \$15-\$20 billion plus 1.2 million passengers. This underscores the economic importance to New Zealand of providing a resilient ferry terminal infrastructure
- Consistent with government policy, it is important that investment in new transport infrastructure is resilient



- The Cook Strait ferries need to provide essential Lifelines support after shock events. Building a key New Zealand transport node on a fault rupture zone does not provide resilience
- Ensuring a resilient Cook Strait connection for New Zealand needs to be Wellington Port's number one objective.

2. SEISMIC RISKS

- GNS Science has recently identified that in a major earthquake on the Wellington Fault the Kaiwharawhara site has a high risk of complex fault rupturing - a risk that other sites around the Wellington harbour do not have
- At Kaiwharawhara there could be complex and unpredictable large surface ruptures over a 200-300m band that coincides with GWRC's and CentrePort's proposed Kaiwharawhara ferry terminal infrastructure
- If the fault ruptures, the infrastructure at the site and in the surrounding area will be significantly damaged. Potential life safety risks
- There are no backup sites available
- KiwiRail also understands that the Thorndon SH1 Motorway overbridge, which passes over the Kaiwharawhara terminal, is a seismically prone structure. Further, the significant additional road connection structures proposed for the site would also be damaged if the fault ruptured.

3. OTHER ISSUES

- The proposed Kaiwharawhara site requires sea-bed reclamation to create enough useable space. This will have environmental impacts and carries increased risk of iwi/public opposition
- Increased insurance costs due to seismic risk (noting insurance providers around the world are becoming increasingly reluctant to insure infrastructure on fault rupture zones).



By email

8 May 2020

File Ref: EXTR-9-907

Hon Grant Robertson
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Tēnā koe Minister

Budget 2020: Inter-Island Ferries

I am writing you in your capacity as Minister of Finance, conscious that you are also a KiwiRail Shareholding Minister and the MP for Wellington Central.

I know you are busy and conscious that the decision-making process for a new ferry terminal for Wellington is not high on your priority list.

You will be aware that KiwiRail has withdrawn from the multi-party process for resolving the location of the ferry terminal at Kaiwharawhara. Greater Wellington has been informed that KiwiRail is looking to go down the "shovel ready" path to unilaterally pursue its preferred option under some form of compulsory acquisition, which would involve the loss of the Port's container operations and the many direct and indirect jobs that come with this facility. That option was the lowest ranked on the basis of the multi-party processes' agreed methodology.

Greater Wellington Regional Council would not ordinarily comment on KiwiRail operations, but the significant threat to CentrePort operations posed by KiwiRail's bullish and unsubstantiated proposals compels me to highlight a number of issues. The KiwiRail proposals will:

- Seriously compromise CentrePort's container operations, the associated 26,000 direct and indirect jobs, and the \$2.5B GDP contribution to the economy – it is likely that the container operations would cease all together to make way for railyards associated with the rail ferry;
- Cost many \$100s of Millions more than continuing with ferry operations at Kaiwharawhara (at a time when I understand that the cost of a new the Port of Marlborough facility is also significantly increasing); and
- Provide no seismic benefits over the Kaiwharawhara location.





Wrapped up in all of this is the significantly increased cost involved in KiwiRail's insistence of:

- Significantly larger vessels; and
- Continuing with a rail enabled ferry – when roll-on/roll-off passenger (ROPAX) ferries will more than likely meet their requirements. Rail-enabled ferries are bespoke and significantly more costly than ROPAX vessels and need much more costly land-side facilities. ROPAX vessels are also more readily available on the secondhand market – all the more likely in a post Covid environment.

Greater Wellington continues to advocate for the Kaiwharawhara facility and both CentrePort and Greater Wellington stand ready to advance the development of the Kaiwharawhara site as a priority Covid project should we receive a green light. It would be particularly beneficial if we could use the RMA fast tracking provisions recently announced by Minister Parker.

In order for this to occur, the Government is likely to have to be firm with KiwiRail on the budget available for new ferries and landside facilities, in Budget 2020.

Ngā mihi


Daran Ponter
Chair

DD: 027 454 0689

Attachments: Q and A
Briefing Paper

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Reference: T2020/1718

SH-11-5-3 (Water)

Date: 29 May 2020

To: Minister of Finance (Hon Grant Robertson)
Associate Minister of Finance (Hon David Parker)
Associate Minister of Finance (Hon Shane Jones)
Associate Minister of Finance (Hon James Shaw)

Deadline: 11am, 3 June 2020
(if any)

Resubmitted DEV item: Investing in water infrastructure to accelerate reform and support economic recovery post COVID-19

The Cabinet paper *Investing in water infrastructure to accelerate reform and support economic recovery post COVID-19* is on the agenda for the Cabinet Economic Development Committee (DEV) meeting of 3 June 2020.

We previously provided you with advice to support the consideration of this paper at DEV on 13 May (T2020/1406 refers). The paper has been resubmitted after the Committee deferred consideration of the paper and invited the Minister of Local Government to undertake further consultation with the Minister for the Environment, Minister for Infrastructure and Minister for Climate Change.

The paper sought agreement to a reform approach to three waters infrastructure, as well as a s9(2)(f)(iv) to achieve the dual objectives of providing an infrastructure stimulus, and achieving reform of three waters service delivery.

We have not yet seen the new version of the paper, but understand that it has the following amendments:

- 1) The proposed s9(2)(f)(iv) funding to local authorities will no longer be allocated based on decisions made within regional groupings of councils, but allocated to individual councils
- 2) Crown Infrastructure Partners (CIP) will play a role in the allocation and oversight of funding

As we have not seen the revised version of this paper including the new proposals for funding allocation, we are unable to comment on them in detail. Further clarity may be

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needed on the process for allocating funding to local authorities, to ensure the funding is conditional on participation in service delivery reform.

We understand that CIP was included in this process at the direction of Ministers, but in the time available we have not been able to identify with certainty the role that CIP will play. We consider that Ministers should ensure that there is sufficient clarity on the role of CIP in this process before making any decisions.

We suggest that, as part of determining CIP's role, consideration is given to other organisations that could provide useful, cost-effective input into the procurement and delivery of three waters infrastructure. For example, the New Zealand Infrastructure Commission, Te Waihangā, has expertise in procurement and delivery support for infrastructure projects and may have the resources and budget to provide this input.

s9(2)(g)(i)

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Morgan Dryburgh, Senior Analyst, National Infrastructure Unit (NIU), N/A
David Taylor, Manager, National Infrastructure Unit, National Infrastructure Unit (NIU),

s9(2)(k)

A small rectangular area of the document has been redacted, appearing as a solid grey block.